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United States
Department of Defense



FY 2006 DoD Purchases Made Through the National
Institutes of Health

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Acronyms

ADA	Antideficiency Act
BFNR	Bona Fide Needs Rule
CIO-SP2i	Chief Information Officer-Solutions and Partners 2 Innovations
COTR	Contracting Officer's Technical Representative
COTS	Commercial Off-the-Shelf
DENCOM	Dental Command
DFARS	Defense Federal Acquisition Regulation Supplement
DSC	Defense Supply Center
ECS III	Electronic Commodities Store III
FAR	Federal Acquisition Regulation
GAO	Government Accountability Office
IG	Inspector General
MIPR	Military Interdepartmental Purchase Request
NASA	National Aeronautics and Space Administration
NIH	National Institutes of Health
O&M	Operations and Maintenance
QASP	Quality Assurance Surveillance Plan
RDT&E	Research, Development, Test, and Evaluation
SEWP	Scientific and Engineering Workstation Procurement
SSC	Space and Naval Warfare Systems Center
USD(AT&L)	Under Secretary of Defense for Acquisition, Technology, and Logistics



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
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November 15, 2007

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY, AND LOGISTICS
COMMANDER, U.S. SOUTHERN COMMAND
DIRECTOR, TRICARE MANAGEMENT ACTIVITY

SUBJECT: Report on FY 2006 DoD Purchases Made Through the National Institutes of Health
(Report No. D-2008-022)

We are providing this report for your information and use. We performed the audit as required by section 817 of public Law 109-362, "John Warner National Defense Authorization Act for Fiscal Year 2007," October 17, 2006. We considered management comments on a draft of this report when preparing the final report.

Comments on the draft report conformed to the requirements of DoD Directive 7650.3 and left no unresolved issues. Therefore, no additional comments are required.

We appreciate the courtesies extended to the staff. Questions should be directed to Mr. Terry L. McKinney at (703) 604-9288 (DSN 664-9288) or Mr. John A. Seger at (703) 604-9254 (DSN 664-9254). See Appendix F for the report distribution. The team members are listed inside the back cover.

A handwritten signature in black ink, reading "Richard B. Jolliffe", is positioned above the printed name.

Richard B. Jolliffe
Assistant Inspector General
Acquisition and Contract Management

cc: Inspector General, Department of Health and Human Services

Department of Defense Office of Inspector General

Report No. D-2008-022

November 15, 2007

(Project No. D2006-D000CF-0243.000)

FY 2006 DoD Purchases Made Through the National Institutes of Health

Executive Summary

Who Should Read This Report and Why? DoD contracting officers, contracting specialists, program managers, and financial managers should read this report. This report discusses problems we found when either DoD organizations made purchases using the National Institutes of Health (NIH) Electronic Commodities Store III (ECS III) contracts or NIH contracting personnel made purchases on behalf of DoD using the NIH Chief Information Officer-Solutions and Partners 2 Innovations (CIO-SP2i) contracts. Furthermore, this report discusses 43 potential Antideficiency Act violations related to the purchases reviewed and internal control deficiencies on interagency acquisitions.

Background. We performed this audit as required by section 817, Public Law 109-364, "John Warner National Defense Authorization Act for Fiscal Year 2007," October 17, 2006. We conducted this audit jointly with the Department of Health and Human Services Office of the Inspector General.

DoD made purchases through NIH on its ECS III and CIO-SP2i multiple-award contracts, which are Government-wide acquisition contracts governed by the Clinger-Cohen Act. The ECS III multiple-award contracts provide commercial off-the-shelf information technology supplies and services. During FY 2006, DoD placed 1,182 orders valued at \$48.5 million on the ECS III contracts. We reviewed 98 delivery orders valued at \$33.2 million, which were for the purchase of commercial off-the-shelf supplies. The CIO-SP2i contracts provide information technology systems and services. During FY 2006, DoD sent 96 military interdepartmental purchase requests, valued at \$90.9 million, for use of the CIO-SP2i contracts. Those military interdepartmental purchase requests were related to 28 task orders that have a potential task order ceiling value of \$697.6 million. We reviewed all 28 task orders, which were for the purchase of services.

Results. DoD program and contracting officials and NIH contracting officials did not comply with the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement when making purchases through the ECS III and CIO-SP2i multiple-award contracts. Specifically, for direct acquisitions, DoD contracting officials did not provide fair opportunity to all eligible contractors for 95 orders and did not document the basis for the award for 31 orders. As a result, competition was limited, and DoD did not have assurance it received the best value when procuring goods (finding A). The Under Secretary of Defense for Acquisition, Technology, and Logistics should disseminate a memorandum to all DoD contracting offices to reemphasize that contracting officials must adhere to the competition and documentation requirements for multiple-award contracts as stated in Recommendation 2.a. of DoD Office of Inspector General Report No. D-2007-023, "FY 2005 DoD Purchases Made Through the National

Aeronautics and Space Administration,” November 13, 2006; and should require contracting officers to use the NIH quoting system when requesting quotes through the ECS III multiple-award contracts vehicle.

For 28 task orders that were assisted acquisitions, DoD program officials constrained the amount of time contractors had to respond to the request for quotes for 24 task orders, provided inadequate price analysis information for 16 task orders, conducted inadequate Government contract surveillance for 13 task orders, did not prepare required contract documentation for 6 task orders, allowed a contractor employee to perform an inherently governmental function for 1 task order, and used the cost-plus-percentage-of-cost system of contracting for 1 task order. Also, for assisted acquisitions, NIH contracting officials allowed out-of-scope work on 3 task orders at 3 DoD facilities and did not prepare required contract documentation for any of the 28 task orders we reviewed. As a result, DoD did not have assurance that it obtained the best value when procuring services or that contractors were performing efficiently (finding B). The Under Secretary of Defense for Acquisition, Technology, and Logistics should require users of the CIO-SP2i contracts to create a competitive environment by increasing solicitation response time for complex, large-dollar value, multiple-year tasks; and disseminate guidance to reemphasize to the users of the CIO-SP2i contracts that they are responsible for many of the contract preaward requirements. Also, the Commander, U.S. Southern Command should request termination of a task order operating under a potentially illegal contract type at the most economical point in time. Recommendations to the National Institutes of Health will be in a separate report issued by personnel from the Department of Health and Human Services Office of the Inspector General.

We identified 43 task and delivery orders that had potential violations of the bona fide needs rule and the purpose statute that could result in Antideficiency Act violations of \$31.2 million. Also, DoD allowed NIH to conduct advanced billing and DoD personnel provided military interdepartmental purchase requests lacking details or a reference to a statement of work. As a result, funds were not used as Congress intended (finding C). We are not making recommendations to address the potential Antideficiency Act violations and advanced funding problems noted in this report. Such recommendations will be made in a report summarizing all funding problems noted during our audits of interagency contracting. In addition, during our audit, the Under Secretary of Defense (Comptroller)/Chief Financial Officer took actions to either fix the potential violation, initiate formal investigation, or determine that no violation occurred. In addition, the Under Secretary of Defense (Comptroller)/Chief Financial Officer stopped providing advance funding to NIH. However, in the future, the Director, TriCare Management Activity needs to provide more detailed funding documents or a reference to a statement of work.

DoD did not have effective internal controls over interagency acquisitions. Specifically, DoD contract and program officials did not justify using a non-DoD contract for 48 contract actions valued at \$156.7 million. They provided an inadequate justification for 62 contract actions valued at \$99.9 million. As a result, DoD program and contracting officials inadequately justified using non-DoD contracts and may have not obtained the best price available for their purchases (finding D). We are not making a recommendation on the internal control deficiencies found. The same deficiencies have been identified in previous reports. The Under Secretary of Defense for Acquisition, Technology, and Logistics is aware of the deficiencies and is taking corrective action.

See the Findings sections of the report for the detailed recommendations.

Management Comments. The Under Secretary of Defense for Acquisition, Technology, and Logistics; the Commander, U.S. Southern Command; and the Director, TriCare Management Activity provided comments to our draft report. The Commander, U.S. Southern Command and the Director, TriCare Management Activity also provided comments regarding potential Antideficiency Act violations.

The Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics; the U.S. Southern Command; and TriCare Management Activity concurred with the recommendations; therefore, no further comments are required. See the Finding section of the report for a discussion of management comments and the Management Comments section of the report for the complete text of the comments.

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Background

This audit was performed as required by section 817, Public Law 109-364, “John Warner National Defense Authorization Act for Fiscal Year 2007,” October 17, 2006. Section 817 states:

“(a) INSPECTOR GENERAL REVIEWS AND DETERMINATIONS.—

(1) IN GENERAL.—For each covered non-defense agency, the Inspector General of the Department of Defense and the Inspector General of such non-defense agency shall, not later than March 15, 2007, jointly—

(A) review—

(i) the procurement policies, procedures, and internal controls of such non-defense agency that are applicable to the procurement of property and services on behalf of the Department by such non-defense agency; and

(ii) the administration of those policies, procedures, and internal controls; and

(B) determine in writing whether—

(i) such non-defense agency is compliant with defense procurement requirements;

(ii) such non-defense agency is not compliant with defense procurement requirements, but has a program or initiative to significantly improve compliance with defense procurement requirements;

(iii) neither of the conclusions stated in clauses (i) and (ii) is correct in the case of such non-defense agency; or

(iv) such non-defense agency is not compliant with defense procurement requirements to such an extent that the interests of the Department of Defense are at risk in procurements conducted by such non-defense agency.”

The law requires audits of the Department of Veterans Affairs and the National Institutes of Health (NIH). This report covers our audit of NIH. A separate report will address the audit of the Department of Veterans Affairs.

DoD primarily made purchases through NIH on its Electronic Commodities Store III (ECS III) and Chief Information Officer-Solutions and Partners 2 Innovations (CIO-SP2i) contracts. The NIH contracts are Government-wide acquisition contracts governed by the Clinger-Cohen Act. The Clinger-Cohen Act assigns the overall responsibility for the acquisition and management of information technology to the Director, Office of Management and Budget. The Office of Management and Budget designated NIH as an executive agent. This designation gave NIH the authority to make the ECS III and CIO-SP2i contracts available to the entire Federal Government as Government-wide acquisition contracts.

The ECS III multiple-award contracts provide commercial off-the-shelf (COTS) products and services and are structured as indefinite-delivery, indefinite-quantity contracts using firm-fixed-price delivery orders. DoD contracting officers can use direct acquisition¹ to award either delivery or task orders on the ECS III contracts.

The CIO-SP2i contracts provide information technology services. The CIO-SP2i contracts are also structured as indefinite-delivery, indefinite-quantity contracts. However, the task orders may be time-and-materials, firm-fixed-price, cost-sharing, cost-plus-fixed-fee, or cost-plus-award-fee. NIH contracting officers can use assisted acquisition² to award either delivery or task orders on the CIO-SP2i contracts.

Objective

Our overall audit objective was to review DoD procedures for making purchases through NIH. Specifically, we examined the policies, procedures, and internal controls to determine whether DoD had a legitimate need to use NIH, whether DoD clearly defined requirements, whether NIH and DoD properly used and tracked funds, and whether requirements were competed in accordance with the Federal Acquisition Regulation (FAR), and the Defense Federal Acquisition Regulation Supplement (DFARS). See Appendix A for a discussion of the scope and methodology. See Appendix B for prior coverage related to the objectives.

Review of Internal Controls

At the sites visited, we identified material internal control weaknesses as defined by DoD Instruction 5010.40, "Manager's Internal Control (MIC) Program Procedures," January 4, 2006. DoD organizations were required by DFARS 217.7802 to develop policies for awarding orders using non-DoD contracts. The sites we visited had problems with developing, implementing, and executing policies. Contracting and program officials were not complying with regulations and statutes. Those officials should have the necessary training and knowledge to properly execute the orders. We will not be issuing a recommendation to the Under Secretary of Defense for Acquisition, Technology, and Logistics to improve the internal controls deficiencies found during the audit. Similar issues have been reported in recent audit reports. The Under Secretary of Defense for Acquisition, Technology, and Logistics is aware of the issues and is taking corrective action. We will provide a copy of the report to the senior officials responsible for internal controls in the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics [USD(AT&L)] and in the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer.

¹ Direct acquisitions are task or delivery orders awarded by DoD officials using a contract awarded by a non-DoD organization.

² Assisted acquisitions are contracts, task orders, or delivery orders awarded on behalf of DoD by a non-DoD organization.

A. DoD Use of the NIH Electronic Commodities Store III Multiple-Award Contracts

DoD contracting officials did not comply with the FAR and DFARS when making purchases through the ECS III multiple-award contracts. Specifically, of the 98 delivery orders we reviewed, DoD contracting officers:

- awarded 95 delivery orders, valued at \$32.6 million, without providing fair opportunity to all vendors qualified under the multiple-award contracts; and
- did not prepare award documentation for 31 delivery orders, valued at \$11.2 million.

Contracting officials were unaware of, improperly followed, or misinterpreted regulations. As a result, DoD has no assurance it obtained the best value when procuring goods.

ECS III Orders Reviewed

NIH awarded the ECS III multiple-award contracts on November 26, 2002, with a price ceiling of \$6 billion and a period of performance of 10 years. These multiple-award contracts consisted of 66 separate contracts, which were divided into 6 different categories or lots. For all purchases from the ECS III multiple-award contracts, DoD contracting officials made all award decisions. Generally, DoD program officials identified the requirement, obtained funding from the finance and accounting office, and provided the requirement and funding to the DoD contracting office. The DoD contracting office then determined which contract they would use.

During FY 2006, DoD awarded 1,182 delivery orders, valued at approximately \$48.5 million, using the ECS III contracts. We reviewed 98 delivery orders, valued at \$33.2 million, at 12 DoD sites. Those orders represented 68 percent of the total dollar value of delivery orders DoD awarded using the ECS III contracts during FY 2006. All 98 delivery orders were for the purchase of COTS supplies. See Appendix C, Table C-1, for a list of the direct acquisition sites visited, the orders reviewed at each site, their respective dollar values, and contract deficiencies identified.

Contracting Criteria

FAR Subpart 4.8, “Government Contract Files.” This section prescribes the requirements for establishing, maintaining, and disposing of contract files.

FAR 4.801 states that the documentation in the files must be sufficient to constitute a complete history of the transaction. FAR 4.802 states that a contract file must consist of documents that detail the basis for the acquisition and the award.

FAR 4.803 lists the records that are normally contained in the contract files, including source selection documents, acquisition planning information, and Government estimates of contract price.

FAR Subpart 8.4, “Federal Supply Schedules.” This section requires contracting officers to consider reasonably available information about the supply or service offered by surveying at least three supply schedule contractors.

FAR 16.505, “Ordering.” This section governs orders under multiple-award contracts, including requirements for fair opportunity and award selection documents for orders.

Fair Opportunity. For orders exceeding the \$2,500 threshold and issued under multiple-delivery-order or multiple-task-order contracts, the contracting officer must provide each awardee a fair opportunity to be considered for award. However, the fair opportunity process has the following exceptions.

- (i) The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays.
- (ii) Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized.
- (iii) The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.
- (iv) It is necessary to place an order to satisfy a minimum guarantee.

Award Selection Document. The contracting officer must document in the contract file the rationale for the award and price of each order. Also, the contract file must identify the basis for using an exception to the fair opportunity process.

DFARS 208.405-70, “Additional Ordering Procedures.” This section requires orders exceeding \$100,000 to be placed on a competitive basis. It also requires contracting officers to send the requirements to as many schedule contractors as practicable to ensure they receive offers from at least three contractors that can fulfill the requirements.

Compliance With Acquisition Regulations for ECS III Contracts

DoD contracting officials did not comply with the FAR and DFARS when using the ECS III multiple-award contracts. Specifically, DoD contracting officials did not provide a fair opportunity to multiple-award vendors and did not prepare required contract documentation.

Fair Opportunity for Multiple-Award Vendors. Contracting officials did not provide multiple-award vendors with a fair opportunity for 95 delivery orders valued at \$32.6 million. In addition, DoD contracting officials did not adequately document exceptions to fair opportunity for 93 delivery orders valued at \$31.7 million. The NIH contracts are multiple-award contracts regulated by FAR 16.505. According to FAR 16.505, when including multiple-award vendors in the award process, each multiple-award vendor must be provided a fair opportunity for award consideration unless an exception to fair opportunity exists and is documented. Of the 95 delivery orders, contracting officers:

- incorrectly applied the requirements of FAR Subpart 8.4 and DFARS 208.405-70 to 36 delivery orders valued at \$16.9 million;
- requested quotes from selected vendors, but not all vendors on the multiple-award contracts, for 19 delivery orders valued at \$8.6 million; and
- awarded 38 delivery orders, valued at \$6.2 million, on a sole-source basis without adequately justifying their decision for the award.

For example, the Space and Naval Warfare Systems Center (SSC) Charleston, South Carolina, contracting officers awarded 29 delivery orders valued at \$12.3 million without providing fair opportunity to all the multiple-award vendors. The contracting officers received at least three quotes from the requirements official, who requested the purchase and conducted the market research. The contracting officers relied on the results of the market research performed by the requiring official and did not conduct an independent review of the quotes the requiring official provided. The contracting officers received the quotes and awarded the order to the vendor that had the lowest cost. Because ECS III is a multiple-award contracting vehicle regulated by FAR 16.505, SSC Charleston should have provided a fair opportunity to all the qualified vendors on the ECS III contracts.

In another example, contracting officers at the Marine Corps Systems Command in Quantico, Virginia, awarded five orders valued at \$3 million by requesting quotes from various vendors by using different contracting vehicles. Because all the selected vendors were on a multiple-award contract, the Marine Corps Systems Command should have used the competition requirements for FAR 16.505.

In addition, contracting officers at the Defense Supply Center (DSC) in Philadelphia, Pennsylvania, awarded 22 of 29 delivery orders to Force 3, Inc., on a sole-source basis. The 22 delivery orders were valued at \$2.3 million. Of the 22 delivery orders, DSC Philadelphia awarded 19 to support the U.S. Army Dental Command (DENCOM) comprehensive dental digital imaging network-picture archiving and communications system. DENCOM program officials conducted preliminary market research that included seven companies that could provide the equipment, but their research did not include Force 3, Inc., the awardee. DENCOM program officials stated they did not focus their market research efforts on a specific company and relied on the expertise of DSC Philadelphia contracting officials to select a vendor. In addition, they could not confirm who ultimately decided to select Force 3, Inc. However, DSC Philadelphia contracting officials stated that they awarded the orders to Force 3, Inc., based on the recommendation from DENCOM. We could not find documentation to determine who recommended that DSC Philadelphia award the orders to Force 3, Inc. Because Force 3, Inc., is one of the vendors on the ECS III multiple-award contracts, the contracting officers at DSC Philadelphia should have followed FAR 16.505 and provided all ECS III vendors with a fair opportunity. DSC Philadelphia did not award these 22 delivery orders on a competitive basis; therefore, DoD has no assurance that it paid a reasonable price for the goods.

Failure to provide a fair opportunity to all multiple-award vendors could prevent DoD from obtaining the best price available. DoD normally obtains better prices when adequate competition occurs.

Award Selection Documents. Contracting officials did not prepare award selection documents. FAR Subpart 4.8 requires contracting officers to include in the contract files documentation supporting the basis for award. In addition, FAR 16.505 requires contracting officials to provide decision documents for orders awarded on multiple-award contracts. The decision documents must state the rationale for the award and price of each order. The document must also identify the basis for using an exception to the fair opportunity process. Of the 98 delivery orders reviewed, 31 delivery orders, valued at \$11.2 million, did not contain award selection documents.

For example, SSC Charleston awarded 22 delivery orders valued at \$8.9 million and did not document the basis for award. Also, DSC Philadelphia awarded seven delivery orders valued at \$1.8 million without preparing an award selection document. The delivery orders file did not have documentation to indicate that the contracting officers conducted market research or to indicate why the delivery orders were awarded on a sole-source basis. Because the contracting officers did not document the basis for award, we cannot determine whether DoD received the best price or whether the contracting officer chose the best vendor for the award. The contract file should have sufficient documentation to provide a complete history of the transaction. Well-documented market research could help contracting officers obtain competition when purchasing similar items in the future.

Knowledge of Regulations. DoD contracting officials were unaware of, improperly followed, or misinterpreted acquisition regulations when procuring

supplies with the ECS III contracts. In addition, DoD contracting officials were unaware of the tools provided on the NIH Information Technology Acquisition and Assessment Center Web site to facilitate the use of its contracting vehicles.

DoD contracting officials are required to have knowledge of the legislation and regulations used in acquiring goods and services at fair and reasonable prices on behalf of the Government and have the skills to apply the guidance to specific actions. The FAR is the primary acquisition regulation in the Federal Government; therefore, contracting officials should be cognizant and well-versed in FAR criteria and how those criteria relate to specific contracts. Contracting officials should have basic FAR knowledge about providing fair opportunity on multiple-award contracts and documenting award decisions. In addition, the contracting officers may receive advice from specialists in law, audit, engineering, transportation, finance, or other functions; however, the contracting officers remain responsible and accountable for the contracts. At each of the direct acquisition sites visited, the contracting officers exhibited a lack of appropriate FAR knowledge.

Contracting officials awarded 95 delivery orders without fair opportunity because they misinterpreted FAR Subpart 8.4, DFARS 208.405-70, or were not aware of FAR 16.505. For 36 of 95 delivery orders, valued at \$16.9 million, contracting officers followed the procedures for awarding an order on the General Services Administration Federal supply schedules. Contracting officials at SSC Charleston; SSC San Diego; DSC Philadelphia; Fleet and Industrial Supply Center in San Diego, California; Naval Air Systems Command Patuxent River, Maryland; Defense Information Technology Contracting Office, Scott Air Force Base, Illinois; and Marine Corps Regional Contracting Office Southwest in Camp Pendleton, California, incorrectly stated that FAR Subpart 8.4 applied to the NIH contracts. FAR Subpart 8.4 provides policies and procedures for the acquisition of goods and services on the General Services Administration Federal supply schedules and multiple-award schedules. These procedures require contracting officers to consider a minimum of three vendors for award. However, the ECS III contracts are multiple-award contracts, not schedules, and are therefore regulated by FAR 16.505.

For 19 of 95 delivery orders, valued at \$8.6 million, contracting officers requested price quotes from a varying number of vendors and contract vehicles but did not provide a fair opportunity to all ECS III multiple-award vendors. For example, the contracting officer at the Marine Corps Systems Command Quantico stated that fair opportunity was satisfied as outlined in FAR 16.505, by requesting quotes from other available contracts or more than one vendor.

For 40 of 95 delivery orders, valued at \$7.0 million, DoD contracting officials awarded the delivery orders on a sole-source basis. For example, a contracting officer at the Naval Research Laboratory in Washington, D.C., awarded delivery order N00173-05-F-0849 for \$158,500 to multiple-award vendor A&T Systems on a sole-source basis. The contracting officer stated that A&T Systems had a competitively awarded Government-wide acquisition contract; therefore, no further competition was necessary.

These contracting officials demonstrated a lack of FAR and DFARS knowledge because they did not provide a fair opportunity when using the ECS III contracts.

We previously reported similar results regarding DoD contracting officers' improper use of non-DoD multiple-award contracts in the DoD Inspector General (IG) Report No. D2007-023, "FY 2005 DoD Purchases Made Through the National Aeronautics and Space Administration," November 13, 2006. Specifically, the report stated that contracting officers at SSC Charleston and SSC San Diego incorrectly applied FAR Subpart 8.4 procedures when awarding orders on the National Aeronautics and Space Administration (NASA) Scientific and Engineering Workstation Procurement (SEWP) contracts. The NASA SEWP contracts were also multiple-award contracts; therefore, contracting officers should have followed the procedures for fair opportunity, as outlined in FAR 16.505.

We visited both SSC Charleston and SSC San Diego during this audit and discovered that the same contracting officers were making the same errors that we previously reported. During our visit, a contracting officer at SSC Charleston stated that in response to a July 2006 draft of the DoD IG report on the use of the NASA SEWP contracts, SSC Charleston implemented new policies and procedures on the use of multiple-award contracts. The contracting officer also stated that SSC Charleston contracting officers did not follow the required competition procedures for the orders awarded on the ECS III contracts because of confusion that existed prior to July 2006 regarding the process for awarding orders on multiple-award contracts. We also reviewed orders issued after July 2006 and found that contracting officers still did not provide a fair opportunity. However, after our second site visit, SSC Charleston finally took corrective action to minimize future misuse of the ECS III and NASA SEWP contracts. In November 2006, SSC Charleston provided training to its contracting officers to clarify and describe the specific procedures for awarding orders on the General Services Administration Federal supply schedules, the ECS III contracts, and the NASA SEWP contracts.

At SSC San Diego, we found that the contracting officers made the same mistake when awarding FY 2006 orders on the ECS III multiple-award contracts as they did when using the NASA SEWP. Therefore, they continued to have the exact same problems as they had the previous year. SSC San Diego personnel have not taken steps to prevent their contracting officers from continuing to misapply FAR Subpart 8.4, FAR 16.505, and DFARS 208.405-70.

NIH Web Site. The NIH Information Technology Acquisition and Assessment Center Web site (NIH Web site) provides guidelines for using its contracts and has an on-line quoting system. Available on the NIH Web site are the ECS III "Contract Details" and "Guidelines" documents, which state that fair opportunity should be provided to all contractors on the ECS III multiple-award contracts unless one of the exceptions to fair opportunity applies. In addition, the NIH Web site has a section of frequently asked questions that reminds users to provide a fair opportunity as required by FAR 16.505.

The NIH Web site provides a tool to allow users to submit an on-line request for quotes. The tutorial section of the NIH Web site provides instructions on how to

use the tool. The tutorial provides step-by-step guidance, with illustrations, on how to place a request for quote using the tool. When the user places a request for quote, the tool provides fair opportunity by automatically notifying all the approved vendors listed in the selected lot. The system also allows the user to select an exception to fair opportunity, if one applies.

Contracting officers at the 12 sites visited were either unaware of or did not use the NIH Web site when awarding delivery orders on the ECS III contracts. Contracting officers stated that they contacted vendors directly and either did not use or did not know about the NIH Web site. Had the contracting officers been proactive and conducted research on the NIH Web site, they could have known that they were required to provide a fair opportunity to all vendors on the ECS III contracts.

As discussed earlier, we identified the same problems in FY 2005 when DoD contracting officials awarded orders on the NASA SEWP contracts. We recommended that USD(AT&L) issue a policy memorandum emphasizing competition requirements when using non-DoD contracts. USD(AT&L) agreed with this recommendation and expects to issue a policy memorandum by November 30, 2007.

Conclusion

The foundation of good contracting when using multiple-award contracts is competition, and its importance should not be overlooked. Adequate competition ensures that the Government receives the best value. However, contracting officers at the DoD sites visited did not foster a competitive environment because they did not provide ECS III multiple-award vendors with a fair opportunity. The intent of multiple-award contracting is to use an efficient acquisition process to achieve competition without increasing the Government's risk. Failing to provide fair opportunity prevents the Government from achieving savings through competition. In addition, contracting officers are responsible for consistently and correctly following the FAR and DFARS. DoD contracting officers did not consistently document contract files and did not prepare award selection documents.

Recommendations, Managements Comments, and Audit Response

A. We recommend that Under Secretary of Defense for Acquisition, Technology, and Logistics:

1. Disseminate a memorandum to all DoD contracting offices to reemphasize the following:

(a) Contracting officials are responsible for knowing and adhering to the regulations for different contract types, including single-award contracts, multiple-award contracts, and Federal supply schedules.

(b) Contracting officers are required to follow Federal Acquisition Regulation 16.505, "Ordering," when placing orders on multiple-award contracts. Contracting officers must provide a fair opportunity to all vendors in a multiple-award contract.

(c) Federal Acquisition Regulation 4.8, "Government Contract Files," and 16.505, "Ordering," require the contract files to contain award selection documents that explain the basis for award.

(d) Federal Acquisition Regulation Subpart 8.4, "Federal Supply Schedules," applies only to the General Services Administration Federal supply schedule and other Federal schedules, to which General Services Administration has delegated the authority.

We made this same recommendation in DoD Office of Inspector General Report No. D2007-023, "FY 2005 DoD Purchases Made Through the National Aeronautics and Space Administration," November 13, 2006. However, as of August 2007, the Under Secretary of Defense for Acquisition, Technology, and Logistics had not issued the recommended guidance.

Office of USD(AT&L) Comments. USD(AT&L) provided draft report comments signed by the Director of Defense Procurement and Acquisition Policy (Director of Defense Procurement). The Director of Defense Procurement concurred. The Director of Defense Procurement stated that DoD will issue a policy memo addressing all the deficiencies mentioned in this recommendation by November 30, 2007.

2. Direct contracting officers to use the National Institutes of Health Information Technology Acquisition and Assessment Center Web site's request for quote tool when using the Electronic Commodities Store III multiple-award contracts.

Office of USD(AT&L) Comments. The Director of Defense Procurement concurred. The Director of Defense Procurement stated that DoD will coordinate with the National Institutes of Health to post language on the National Institutes of Health Information Technology Acquisition and Assessment Center Web site to require DoD users of the Electronic Commodities Store III multiple-award contracts to use the Web site's request for quote. The Director of Defense Procurement planned to complete this action by October 31, 2007. The Director of Defense Procurement has not taken any action as of November 9, 2007.

B. DoD Use of the NIH Chief Information Officer-Solutions and Partners 2 Innovations Multiple-Award Contracts

DoD program officials did not comply with the FAR and DFARS when making purchases through the NIH CIO-SP2i contracts. Specifically, for 28 task orders, officials:

- constrained the amount of time for contractors to respond to the request for quotes for 24 task orders that had a potential task order ceiling value of \$516.2 million;
- provided inadequate price analysis information for 16 task orders that had a potential task order ceiling value of \$399.8 million;
- conducted inadequate Government contract surveillance for 13 orders that had a potential task order ceiling value of \$345.3 million;
- did not prepare required acquisition plans for 6 task orders that had a potential task order ceiling value of \$414.3 million;
- allowed a contractor employee to perform inherently governmental functions on a portion of one task order, at a cost of \$495,000; and
- awarded a cost-plus-fixed-fee task order, which had a potential task order ceiling value of \$98.2 million, but managed it as a cost-plus-percentage-of-cost task order.

In addition, NIH contracting officials allowed out-of-scope work on three task orders at three DoD activities and did not prepare required contract documentation to support the procurement of services for the 28 task orders we reviewed.

These conditions existed because DoD and NIH officials were unaware of, improperly followed, or misinterpreted regulations. As a result, DoD has no assurance it obtained the best value when procuring services and no assurance that contractors are performing efficiently.

CIO-SP2i Orders

The CIO-SP2i multiple-award contracts consist of 45 prime contractors capable of performing in the following 9 task areas:

- Task Area 1: Chief Information Officer Support;
- Task Area 2: Outsourcing;
- Task Area 3: Information Technology Operations and Maintenance;
- Task Area 4: Integration Services;
- Task Area 5: Critical Infrastructure Protection and Information Assurance;
- Task Area 6: Digital Government;
- Task Area 7: Enterprise Resource Planning;
- Task Area 8: Clinical Support, Research, and Studies; and
- Task Area 9: Software Development.

NIH awarded the CIO-SP2i contracts on December 21, 2000, with a potential contract ceiling value of \$19.5 billion and a period of performance of 10 years. For the CIO-SP2i contracts, DoD program officials identify a requirement and provide it to the NIH contracting office. The DoD program officials also provide several documents, such as the task order requirements package, which includes the statement of work, an independent Government cost estimate, and documentation to support an exception to fair opportunity, if applicable. The NIH contracting officer determines whether the requirement is within the scope of the CIO-SP2i contracts. After determining that a requirement is within scope, the NIH contracting officer issues a request for proposal to all applicable CIO-SP2i multiple-award contractors. The contractors send their proposals to DoD for review and evaluation. After analyzing the contractors' proposals, the DoD program officials send their award recommendation to the NIH contracting officer, who signs the order and commits the Government to the purchase. DoD program officials are responsible for contract oversight and reporting any problems to the NIH contracting officer.

NIH charges a fee between 2 and 2.5 percent to use the CIO-SP2i contracts, which is calculated as a percentage of the total task order amount. During FY 2006, DoD paid NIH approximately \$2.1 million in fees.

During FY 2006, NIH accepted 96 DoD military interdepartmental purchase requests (MIPR), valued at \$90.9 million, funding 28 task orders. These 28 task orders for services had a potential task order ceiling value of \$697.6 million. Of the 28 task orders, NIH awarded 6 during FY 2006. NIH awarded the remaining 22 task orders in previous years; the MIPRs accepted during FY 2006 for these task orders were either to exercise options or to incrementally fund projects. We visited 16 DoD sites and reviewed 22 task orders that had a potential task order ceiling value of \$621.5 million. We reviewed the remaining six task orders at the NIH contracting office without visiting the DoD organization that developed the requirement.

The potential task order ceiling value for those six task orders was \$76.1 million. See Appendix C, Table C-2, for a list of the assisted acquisition sites visited, the number of orders reviewed at each site, their respective dollar values, and contract deficiencies identified.

Contracting Criteria

FAR Subpart 7.5, “Inherently Governmental Functions.” This section prescribes policies and procedures to ensure that contractors do not perform inherently governmental functions.

FAR 7.503(c) provides a list of examples of functions considered to be inherently governmental, such as “the command of military forces, especially the leadership of military personnel who are members of the combat, combat support, or combat service support role.”

FAR Part 16, “Types of Contracts.” This section describes the types of contracts that may be used in acquisitions. FAR 16.102(c) states that cost-plus-percentage-of-cost contracts must not be used.

FAR 46.103, “Contracting Office Responsibilities.” This section states:

Contracting offices are responsible for receiving from the activity responsible for technical requirements any specifications for inspection, testing, and other contract quality requirements essential to ensure the integrity of the supplies or services (the activity responsible for technical requirements is responsible for prescribing contract quality requirements, such as inspection and testing requirements or, for service contracts, a quality assurance surveillance plan).

FAR Subpart 46.4, “Government Contract Quality Assurance.” This section requires the Government to perform contract quality assurance as many times as necessary to determine that the supplies or services conform to contract requirements. It also states that the Government should prepare, in conjunction with the statement of work, quality assurance surveillance plans (QASP) that specify all the work requiring surveillance and the method of surveillance.

DFARS Subpart 201.6, “Contracting Authority and Responsibilities.” This section states that contracting officers may designate qualified personnel as their authorized representatives to assist in either technical monitoring or administration of a contract. It also states that a contracting officer’s representative must be designated in writing and should be qualified by training and experience commensurate with the responsibilities delegated by the contracting officer.

DFARS Subpart 207.1, “Acquisition Plans.” This section requires the head of the agency to prepare a written acquisition plan for the acquisition of products or services when the total cost of the contract is estimated at \$30 million or more for

all years or \$15 million or more for any fiscal year.³ It also assigns responsibility for acquisition planning to the program manager or other official responsible for the program.

Compliance With Acquisition Regulations for CIO-SP2i Contracts

DoD program officials and NIH contracting officials did not comply with the FAR and DFARS when awarding and administering orders under the CIO-SP2i multiple-award contracts.

DoD Responsibilities. Although DoD used the CIO-SP2i multiple-award contracts through assisted acquisition, DoD program officials had several responsibilities. DoD program officials inadequately performed these duties.

Specifically, officials:

- constrained the amount of time for the contractors to respond to the requests for proposals and then recommended award to the sole bidder,
- provided inadequate price analyses to NIH,
- conducted inadequate contract surveillance,
- did not prepare required contract documentation,
- allowed a contractor employee to perform an inherently governmental function, and
- awarded a cost-plus-fixed-fee task order but managed it as a cost-plus-percentage-of-cost task order.

Competition Involving Single-Bid Task Orders. For 24 of the 28 task orders we reviewed, DoD program officials and NIH contracting officials constrained the amount of time for contractors to respond to requests for proposals. For 12 of these 24 task orders, the sole bidder and awardee was the incumbent contractor. The potential task order ceiling value for those 12 task orders was \$285 million.

For example, NIH awarded task order 2425 for the Defense Technical Information Center in Fort Belvoir, Virginia, to Computer Sciences Corporation.

³ DFARS Subpart 207.1, "Acquisition Plans," was revised on December 19, 2006. The revision raised the requirement for written acquisition plans for contracts to an estimated value of \$50 million or more for all years or \$25 million or more for any fiscal year. The contracts we reviewed were awarded prior to December 19, 2006.

Although the scope of this task order was fairly complex, the request for proposal was open for only 5 business days. Only one contractor, the incumbent for 11 years, provided a proposal.

The task order period of performance included one 48-month base period and one 24-month option period. The task order had a potential task order ceiling value of \$42.3 million. The purpose of the task order was to provide services to support:

- secure Web applications development,
- Web-enabled workflow,
- user management,
- integration of COTS and open source products,
- hypertext transfer protocol deployment to servers on the Non-Secret Internet Protocol Router Network and the Secret Internet Protocol Router Network,
- product evaluations and decision analysis,
- configuration management testing and quality assurance,
- portal development,
- statistics,
- search capabilities, and
- geographical information systems.

These same issues were reported to NIH by a Government consulting firm that reviewed selected orders NIH issued under Government-wide acquisition contracts during FY 2004. The Government consulting firm reported that most requests for proposals gave contractors only a 5-day bid period, even when the order was for a large-dollar value and a multiple-year period of performance.

The DoD task orders we reviewed were large-dollar value orders that involved the performance of complex tasks. Although NIH contracting officials provided fair opportunity to the appropriate contractors, the high frequency of single-bid task orders makes one question whether a truly competitive process occurred. For 12 orders, with a total potential task order ceiling value of \$285 million, DoD received bids from only the incumbent. In turn, DoD recommended that NIH award the order to the sole bidder, the incumbent.

A NIH contracting officer stated that the FAR gives contracting officers discretion to determine the minimum number of days a solicitation is open and that NIH allows the customer to determine the solicitation response time. However, FAR 16.505(b)(1)(iii) also requires contracting officers to consider the amount of time contractors need to make informed business decisions on whether to respond to potential orders. Failure to consider the amount of time contractors need effectively denies fair opportunity. DoD officials should ensure that they provide sufficient bid time to allow for maximum competition.

Price Reasonableness Decisions. DoD program officials did not determine and support that the contractors cost proposals were reasonable. The DoD program officials also provided NIH contracting officials with inadequate price analysis information. FAR 15.402, "Pricing Policy," requires contracting officers to purchase supplies and services from responsible sources at fair and

reasonable prices. Also, FAR 15.404, "Proposal Analysis," lists "comparison of proposed prices with independent Government cost estimates" as one of the primary price analysis techniques. In addition, NIH requires the customer to perform a best value analysis of the information contained in the contractors' proposals. NIH also gives the customer the responsibility to select the prime contractor that can satisfy the requirements of the contract, based on the results of the best value analysis. FAR 15.101, "Best Value Continuum," describes different methods agencies can use to perform best value analysis. The regulation states that a cost or price approach can be used when the requirements are clearly defined and the risk of unsuccessful contract performance is minimal. The regulation also states that a trade-off process is appropriate to use when it is in the best interest of the Government to award the contract to other than the lowest priced offeror.

Contracting officials awarded 16 task orders that had a potential ceiling price of \$399.8 million after receiving only 1 bid. For 11 of those task orders, which had a potential contract ceiling price of \$288.3 million, DoD program officials stated that they used the Government estimates as a primary price analysis technique. For 4 of the 11 task orders, the contractors' proposal price was above the Government cost estimate. The cost estimates prepared by DoD program officials did not contain an explanation on the methodology used to develop the estimate. In addition, when differences existed between the Government estimates and the contractors' proposed price, DoD program officials provided little or no evidence that they tried to negotiate the price or reconcile the price differences.

For example, the Joint Interagency Task Force South, Florida, prepared a Government cost estimate for task order 2232 that was significantly lower than the final negotiated price. The cost estimate was \$76.5 million, while the contractor proposal was \$99.5 million.

When Joint Interagency Task Force South officials received the contractor's proposal, they questioned the proposed overhead, general and administrative rates, and fixed fees because the rates exceeded the approved Defense Contract Audit Agency rates. Joint Interagency Task Force South officials attempted to lower the contractor's proposed rates to the approved Defense Contract Audit Agency rates. However, the differences between the contractor's proposed rates and the approved Defense Contract Audit Agency rates accounted for only a small portion of the \$23 million disparity between the contractor's proposed price and the Government cost estimate.

Furthermore, the Government was in a weak negotiating position because although NIH provided a fair opportunity to all required contractors, only the incumbent submitted a bid. The contractor refused to lower its overhead and general and administrative rates but did agree to lower its fixed fee from 10 percent to 8.5 percent. This adjustment resulted in a final task order ceiling value of \$98.2 million. We found no evidence showing the Government attempted to further negotiate the prices or to reconcile the differences between its cost estimate and the contractor's proposed price of \$99.5 million.

Additionally, for 5 of the 16 single-bid task orders, DoD program officials did not compare the proposal price with the Government estimate, nor did they use any other technique to justify that the price was reasonable. The total ceiling price of these 5 orders was \$111.6 million. For example, NIH awarded task order 2425 for the Defense Technical Information Center to Computer Sciences Corporation. That task order had a potential ceiling value of \$42 million. The Defense Technical Information Center program officials did not determine whether the cost proposed by Computer Sciences Corporation was reasonable. The Defense Technical Information Center program officials stated only that Computer Sciences Corporation had been the incumbent for 11 years, and that their relationship was a “true partnership.”

According to section 5 of the CIO-SP2i guidelines, the customer is responsible for conducting best value analysis and evaluating the contractor’s proposal price. DoD officials should ensure that program officials perform adequate price reasonableness determinations prior to making award recommendations. If program officials use inadequate Government cost estimates as a primary price determination technique, DoD cannot be sure it will obtain the best price available. DoD program officials need to place more emphasis on including enough information in the Government cost estimate to ensure that it represents a reasonable price. In addition, when the proposed cost is higher than the Government cost estimate, DoD program officials should provide a detailed analysis to support their determinations that the contractor’s cost proposal is reasonable when compared with the Government cost estimate.

Government Contract Surveillance. DoD program officials did not prepare quality assurance surveillance plans (QASP). They also conducted inadequate contractor surveillance. FAR Subpart 46.4, “Government Contract Quality Assurance,” states that a QASP should be prepared in conjunction with preparation of the statement of work and should specify all work requiring surveillance and the method of surveillance. It also requires the Government to conduct quality assurance to ensure the contractor is performing in accordance with the statement of work. In addition, DFARS Subpart 201.6, “Contracting Authority and Responsibilities,” requires contracting officers to assign in writing a qualified representative to assist in monitoring the administration and technical aspects of the contract. Surveillance of contractor performance and cost is essential to protect the interests of the Government.

DoD should conduct task order surveillance throughout the life of the task order to ensure the contractor performs all required services, especially if the task order was awarded as either a cost-reimbursable task order or a time-and-materials task order. On a cost-reimbursable task order, the Government reimburses the contractor for its incurred costs plus an associated fee. On a time-and-materials task order, the Government reimburses the contractor based on actual cost of materials and direct labor hours at specified fixed hourly rates that include wages, indirect costs, and profit. Neither of those task order types encourages efficient contractor performance because the contractor gets reimbursed for all incurred costs in addition to profit. Therefore, those task order types require appropriate Government oversight to ensure the contractor is performing efficiently.

We evaluated contractor surveillance for the 22 task orders at the 16 DoD sites we visited. Of the 22 task orders, DoD program officials:

- did not prepare a QASP for 19 task orders that had a potential task order ceiling value of \$515.9 million, and
- conducted inadequate contractor surveillance for 13 task orders that had a potential task order ceiling value of \$345.3 million.

For example, NIH awarded task order 2429 on behalf of the Office of the Army Chief Information Office/G6 Army Architecture Integration Cell (Army G6) in Arlington, Virginia, to Science Applications International Corporation. That task order had a potential task order ceiling value of \$432,000. NIH awarded a cost-plus-fixed-fee task order for services to produce an architecture development plan the Army G6 will use to develop the first phase of an information technology infrastructure. Army G6 program officials did not prepare a QASP and the file contained no evidence that Army G6 program officials conducted contractor surveillance. In addition, Army G6 program officials approved invoices that lacked sufficient details to determine whether the contractor was billing the appropriate amount. The invoices consisted of only two labor categories: one for on-site labor and one for off-site labor. In addition, the invoices had a charge for the contractor's fee and for the NIH processing fee. The invoice also included an "other direct costs" category, which included travel expenses. However, the invoices did not show the number of people working on the task order, their respective labor rates, and labor categories (for both on-site and off-site individuals). As a result, the Army G6 cannot be sure whether an appropriate number of qualified individuals worked on this task.

Furthermore, the Army G6 individual serving as the contracting officer's technical representative (COTR) was not officially designated by the NIH contracting officer and was not adequately trained. The individual was acting as COTR because the officially designated COTR was not available to perform the duties.

An adequately trained COTR should have the skills necessary to reasonably ensure the contractor is using efficient and effective cost control methods. In addition, an adequately trained COTR should be cognizant of what his or her duties are and should recognize the importance of providing Government contract surveillance, especially if the task order is a cost-reimbursable or a time-and-materials task order. Those types of orders provide no incentive for the contractor to control costs or to ensure efficiency. Therefore, when using those types of orders, it is vital for the Government to provide constant and adequate surveillance.

DoD officials should stress the importance of adequate Government quality assurance on all its contracts and require COTRs to prepare QASPs and conduct adequate Government contract surveillance.

Acquisition Plans. DoD program officials did not prepare required contract documentation. FAR 4.803 lists required documentation that should be in the contract file, including acquisition plans. Proper planning is an important

part of a successful acquisition. DFARS Subpart 207.1, “Acquisition Plans,” states that a written acquisition plan is required if the total cost of the contract is estimated to be at \$30 million or more for all the contract years or \$15 million or more in one fiscal year. It also assigns overall responsibility for acquisition planning to the program manager or other official responsible for the program. Nine task orders, which had a potential task order ceiling value of \$537 million, met this criteria, meaning they required written acquisition plans. For six of the nine task orders, which had a potential task order ceiling value of \$414.3 million, DoD program officials did not prepare an acquisition plan.

For example, a DoD program official at the Pentagon Telecommunications Center in Arlington, Virginia, did not prepare a written acquisition plan on a task order that had a potential ceiling of \$104.2 million. The program official stated he did not prepare the acquisition plan because NIH did not require it in its task order requirements package and he believed that acquisition plans were required only for large purchases of goods. However, the Pentagon Telecommunications Center program official was required by DFARS Subpart 207.1 to prepare an acquisition plan for this task order whether or not NIH included the requirement in its task order requirements package.

One aspect of good acquisition planning is to consider multiple procurement methods. Acquisition plans should be provided to the contract administration organization to facilitate resource allocation and planning for the evaluation, identification, and management of contractor performance risk. Acquisition plans should also identify the total estimated cost of the requirement. DoD officials need to ensure program officials conduct proper acquisition planning when required.

Inherently Governmental Functions. DoD program officials at the Office of the Secretary of the Air Force Financial Management Information Systems and Technology Directorate allowed a contractor employee to perform an inherently governmental function on task order 2377. FAR Subpart 7.5 prescribes policies and procedures to ensure that inherently governmental functions are not performed by contractors, and it provides a list of functions which are classified as inherently governmental. For example, it lists the determination of agency policy, such as determining the content and application of regulations, as an inherently governmental function. Task 8 of the task order statement of work states, “The contractor shall assist FM-CIO [Financial Management-Chief Information Officer] by performing Staff Officer duties in the Pentagon/National Capital Region.”

Operations staff officers in the Air Force require “a broad operational background and a sound understanding of the full spectrum of Air Force operations and capabilities.” The operations staff officer’s duties include developing and writing “Air Force, joint services, or combined plans, programs, and policies.” The Directorate hired a contractor to perform task 8 and paid the contractor an hourly rate of \$115 to \$122 for a total of \$495,000 from February 2005 through April 2007. We believe staff officer duties are inherently governmental functions and should be performed by a Government civilian employee or a military officer.

Cost-Plus-Percentage-of-Cost Order. NIH awarded task order 2232 on behalf of the Joint Interagency Task Force South on May 1, 2003. The task order had a potential task order ceiling value of \$98.2 million. NIH awarded this task order as a cost-plus-fixed-fee task order. However, DoD program officials at the Joint Interagency Task Force South managed this task order as a cost-plus-percentage-of-cost contract. Cost-plus-percentage-of-cost contracts are specifically forbidden by FAR 16.102(c), which states that the cost-plus-percentage-of-cost system of contracting must not be used. In Urban Data Systems, Inc. v. United States, 699 F.2d 1147 (Fed. Cir. 1983), the Supreme Court established the criteria to identify a cost-plus-percentage-of-cost contract. A contract is considered cost-plus-percentage-of-cost if:

- payment is on a predetermined percentage rate,
- the percentage rate is applied to actual performance costs,
- the contractor's entitlement is uncertain at the time of award, and
- the contractor's entitlement increases commensurately with increased performance costs.

The task order was originally awarded as a cost-plus-fixed-fee task order. On a cost-plus-fixed-fee task order, the contractor gets reimbursed for the actual costs incurred plus a fixed fee negotiated at contract inception. The negotiated fixed fee will not vary with actual cost but could be adjusted as a result of changes in the work to be performed under the contract.

According to Joint Interagency Task Force South contracting officials, at the time NIH awarded the task order, Joint Interagency Task Force South could not determine with certainty what services they needed. As a result, the Joint Interagency Task Force South structured the task order to cover all potential services it might require in the future. Based on that assumption, they estimated a potential task order ceiling of \$90.5 million. To that amount they added the contractor's expected commission or fee, which they negotiated as a fixed fee of \$7.7 million (8.5 percent of the estimated cost ceiling). Thus, the total potential task order ceiling cost was \$98.2 million. However, according to the program officials, they never intended to reach that ceiling through the life of the contract.

Because the initial negotiated fee was calculated based on an amount that was never intended to be reached, we believe that the contractor's fee was uncertain at the time of the award. In addition, the contractor's monthly payments were calculated as 8.5 percent of the actual incurred costs, not based on the fixed fee negotiated when the task order was awarded. Consequently, DoD was managing the task order on a cost-plus-percentage-of-cost basis rather than a cost-plus-fixed-fee basis, as originally awarded.

A cost-plus-percentage-of-cost contract is harmful to the Government because it does not provide an incentive for the contractor to control costs. To the contrary, contractors have an incentive to increase costs and request reimbursement for higher priced items because a higher cost item means a higher fee. The Joint Interagency Task Force South could have prevented this situation

from happening if it had awarded a time-and-materials task order. A time-and-materials task order is permitted when it is not possible at the time of the task order award to accurately estimate the extent or duration of the work or to adequately estimate costs. Joint Interagency Task Force South contracting officials stated that at the time of the task order award, they could not determine with certainty the extent of the services they needed. Therefore, it would have been more appropriate to use a time-and-materials task order.

Because cost-plus-percentage-of-cost contracts are forbidden by FAR 16.102, the Joint Interagency Task Force South should request NIH to terminate this order.

DoD program officials were primarily responsible for the use of the cost-plus-percentage-of-cost task order, as well as contracting for an inherently governmental function. However, NIH contracting officials should have detected these problems, but they did not. We found other problems that were primarily the responsibility of the NIH contracting officials.

NIH Contracting Responsibilities. NIH contracting officials did not effectively perform some of their duties. On three task orders, NIH contracting officials allowed contractors to perform work that was outside the scope of the CIO-SP2i contracts. NIH contracting officials also did not prepare required contract documentation. They awarded all 28 task orders without preparing an award selection document, and also awarded 9 time-and-materials task orders without preparing a determination and findings for using a time-and-materials order.

Out-of-Scope Work. For three task orders, NIH contracting officials allowed DoD to contract for work that was outside the scope of the CIO-SP2i multiple-award contracts. Work on these three task orders included intelligence analysis, language translation, and administrative work. FAR 16.505(a)(2) states that orders must be within the scope of the contract, and the CIO-SP2i “Guidelines” document instructs NIH contracting officials to review the customer’s statement of work for applicability to the scope of the contract.

For example, NIH awarded task order 2361 on behalf of the DoD Criminal Investigation Task Force in Fort Belvoir, Virginia, on January 6, 2005, to Systems Research and Applications Corporation. The task order had a period of performance of a 1-year base period and four 1-year option periods. It had a potential task order ceiling value of \$19.9 million. NIH awarded the order under task area 3, “information technology operations and maintenance support.” This task area requires the contractor to provide information technology operations support and maintenance procedures for information technology systems. The statement of work for the task order required the contractor to provide services to support the work done by criminal investigators at the DoD Criminal Investigation Task Force in support of all aspects of its mission. The DoD Criminal Investigation Task Force was created to investigate war crimes and acts of terrorism committed against U.S. persons, facilities, activities, or interests.

We evaluated the specific tasks described in the statement of work. Although the statement of work required some work related to information technology, such as technical and training support for knowledge management

software, data entry into databases, on-line queries, and file management, other tasks do not seem applicable to the scope of the CIO-SP2i multiple-award contracts.

Specifically, we questioned the applicability of the following tasks:

- analysis of law enforcement and national intelligence data to develop leads for investigative activity or further investigative and data analysis,
- data research and analysis to support attorney products, and
- technical and analytical liaison with law enforcement and intelligence agencies.

In addition, we reviewed the skills possessed by some of the individuals that the contractor hired to work on this task order in relation to the skills and education required by the positions they applied for.

Four individuals were hired as functional analysts. According to the CIO-SP2i labor category, a person in this position analyzes user needs to determine functional and cross-functional requirements, performs functional allocation to identify required tasks and their interrelationships, and identifies resources required for each task. The employment histories of these four individuals indicated that they worked in the intelligence community in a variety of positions, including intelligence analysis. Since these individuals were hired for positions not related to their employment histories, it is not possible to determine whether reasonable prices were paid for their services.

Three additional individuals were hired to be database management specialists. A database management specialist provides highly technical expertise in the use of databases; evaluates and recommends available database management products to support user requirements; and defines file organization, indexing methods, and security procedures for specific user applications. None of the three individuals hired for this position had any educational or professional experience working with databases or any other type of information technology background. Their work experience was mostly in intelligence analysis, terrorism, counterterrorism, and other areas not related to databases or information technology. Because these individuals were hired for positions not related to their employment histories, it is not possible to determine whether reasonable prices were paid for their services.

The NIH contracting officer stated that he reviews the customer's statement of work to determine whether the scope of work is within the scope of the NIH contract. If during the review he sees incidental work not related to information technology, he will approve it as long as the preponderance of the work requested by the customer is related to information technology.

Contracting officers should not award task orders that contain any work that is outside of the scope of the contract. NIH contracting officers should carefully review the statements of work before awarding orders. NIH should

implement and follow a more rigorous process to review statements of work rather than agreeing to tasks that are outside the scope of its contracts. Because contracting officers awarded contracts for out-of-scope work, it was impossible to determine whether DoD paid a fair and reasonable price to hire intelligence and law enforcement personnel as database management specialists.

NIH has started to correct this problem and has notified those DoD activities that it will not allow any out-of-scope work when DoD exercises the options on these task orders.

Award Decision Documentation. NIH contracting officers did not prepare award decision documentation. Specifically, NIH contracting officials did not prepare award selection documents for the 28 task orders we reviewed. FAR Subpart 4.8 requires contracting officers to include in the contract files documentation supporting the basis for award, and FAR 16.505 requires contracting officials to provide decision documents for orders awarded on multiple-award contracts. These decision documents must state the rationale for the award and price of each order, including the basis for using an exception to the fair opportunity process.

Determination and Findings Documentation. NIH personnel did not prepare determination and findings documents when awarding time-and-materials task orders. FAR 16.601, “Time-and-Materials Contracts,” states that a time-and-materials contract may be used only after the contracting officer executes a determination and findings document that no other contract type is suitable, and only if the contract includes a ceiling price that the contractor exceeds at its own risk. Of the 28 task orders we reviewed, 15 were time-and-materials task orders, and one was a hybrid task order with time-and-materials portions. For 9 of the 16 time-and-materials task orders, the NIH contracting officer did not prepare a determination and findings document stating that no other suitable types of contract were available. Those nine task orders had a potential task order ceiling value of \$262.7 million.

Because they did not prepare relevant contract documentation used in the decision making process, the NIH contracting officers did not provide written records of the rationale used for making important contracting decisions such as why the award was made and a certain contract type was justified.

Conclusion

DoD program officials did not consistently follow acquisition regulations. As a result, DoD program officials:

- did not foster a competitive environment,
- provided inadequate price analysis information to NIH contracting officers,

-
- did not perform the required Government contract quality assurance,
 - did not prepare written acquisition plans when required,
 - hired a contractor employee to perform an inherently governmental function, and
 - managed a task order using the cost-plus-percentage-of cost system of contracting.

DoD officials need to properly administer contracts, and they should stress the importance of proper contract administration to DoD program and contracting officials. Because DoD officials did not properly follow Federal acquisition regulations, DoD may not have received the best value when procuring services. Skill and good judgment are required to effectively protect the public interest.

Recommendations, Management Comments, and Audit Response

We are not making recommendations to the National Institutes of Health regarding contracting issues found involving National Institutes of Health contracting officials. Such recommendations will be in a separate report that will be issued by personnel from the Department of Health and Human Services Office of the Inspector General.

B.1. We recommend the Under Secretary of Defense for Acquisition, Technology, and Logistics:

a. Direct users of the Chief Information Officer-Solutions and Partners 2 Innovations contracts to create a competitive environment among all applicable contractors by leaving the solicitation response time open for a period of time commensurate with the complexity and value of the requirement.

Office of USD(AT&L) Comments. The Director of Defense Procurement concurred. The Director of Defense Procurement stated that DoD will coordinate with the National Institutes of Health to post language on its Web site to direct users of the Chief Information Officer-Solutions and Partners 2 Innovations contracts to consider all factors when determining the appropriate solicitation response time. The Director of Defense Procurement expected to complete this action by October 31, 2007. The Director of Defense Procurement has not taken any action as of November 9, 2007.

b. Disseminate guidance to users of the Chief Information Officer-Solutions and Partners 2 Innovations contracts to reemphasize that

DoD users are responsible for much of the pre-contract award requirements. Specifically, program officials using the Chief Information Officer-Solutions and Partners 2 Innovations contracts are required to:

- (1) Document and support price analysis determinations.**
- (2) Conduct effective price negotiations on sole-source awards.**
- (3) Explain resolutions of differences between the Government cost estimates and the contractor's price proposal.**
- (4) Support the methodology used to prepare Government cost estimates.**
- (5) Prepare quality assurance surveillance plans that specify the work that requires surveillance and the type of surveillance to be performed.**
- (6) Prepare acquisition plans when the total procurement cost equals or exceeds the established thresholds for preparing written acquisition plans.**
- (7) Ensure that contractor personnel do not perform inherently governmental functions.**

Office of USD(AT&L) Comments. The Director of Defense Procurement concurred. The Director of Defense Procurement stated that DoD will coordinate with the National Institutes of Health to post language on its Web site that will provide guidance to DoD users of the Chief Innovations Officers-Solutions Partners 2 Innovation contracts on proper pre-award roles and responsibilities. The Director of Defense Procurement expected to complete this action by October 31, 2007. The Director of Defense Procurement has not taken any action as of November 9, 2007.

B.2. We recommend the Commander, U.S. Southern Command request the National Institutes of Health to terminate task order 2232 at the most economical point in time, such as at the end of the current option period of performance.

U.S. Southern Command Comments. The U.S. Southern Command provided draft report comments signed by the Senior Executive Service Director of Programs and Resources (Director of Programs and Resources). The Director of Programs and Resources concurred. The Director of Programs and Resources stated that the U.S. Southern Command and the Joint Interagency Task Force South have agreed not to exercise the option for FY 2008 for task order 2232.

C. Funding Problems With NIH Contracts

DoD contracting, financial, and accounting officials and NIH financial and accounting officials did not comply with appropriation laws and regulations. We identified 43 potential violations of the bona fide needs rule, the purpose statute, or both, which could result in Antideficiency Act violations valued at \$31.2 million. These potential violations included 32 direct acquisitions and 11 assisted acquisitions. Also, DoD personnel prepared MIPRs that lacked details or a reference to a statement of work. In addition, DoD personnel allowed NIH to use advanced billing for purchases DoD made through NIH. DoD financial and contracting officials were either unaware of, did not follow, or misinterpreted funding regulations. As a result, DoD violated the uses and limitations of fund authority mandated by Congress.

Funding Criteria

Antideficiency Act. The Antideficiency Act (ADA) is codified in a number of sections of title 31, United States Code. The purpose of the ADA is to enforce the constitutional budgetary powers residing in Congress with respect to the purpose, time, and amount of expenditures made by the Federal Government. Violations of other laws may trigger violations of ADA provisions.

Purpose Statute. The purpose statute is codified in section 1301, title 31, United States Code (31 U.S.C. 1301). A violation of the purpose statute may cause an ADA violation. The statute states, “appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.”

Bona Fide Needs Rule. The bona fide needs rule (BFNR) is codified in 31 U.S.C. 1502. A violation of the BFNR may cause an ADA violation. The statute states, “The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability.” To use appropriated funds, DoD organizations must have a bona fide need for the requirement in the year the appropriations are available for obligation.

In addition, the Government Accountability Office *Principles of Federal Appropriations Law* (commonly known as The Red Book), third edition, volume I, chapter 5, section B.4, “Delivery of Materials Beyond the Fiscal Year,” provides additional guidance on bona fide needs. It states the legal principle that materials purchased in one fiscal year and not delivered until the following fiscal year do not violate the bona fide needs rule if the material is not commercial items readily available from other sources and delay in delivery is due to production and fabrication of the material, which cannot be purchased on the open market at the time needed for use; due to unforeseen delays to an otherwise properly made obligation; or for replacement of stock.

If agencies purchase goods or services and schedule delivery for a subsequent fiscal year, one could question whether the contract was made in the earlier fiscal year only to obligate funds from an expiring appropriation.

10 U.S.C. 2410a. This statute states that the Secretary of Defense may enter into a contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed 1 year. To meet the requirements of 10 U.S.C. 2410a, the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer has specified that funds for severable services must be obligated in the year of the appropriation funding the services, and the contract period of performance cannot exceed 1 year.

31 U.S.C. 1501. This statute requires a binding agreement between two agencies in writing that will report the specific goods to be delivered, real property to be bought or leased, or work or services to be provided.

DoD Financial Management Regulation Guidance. Annual appropriation acts define the uses of each appropriation and set specific timelines for use of the appropriations. The DoD Financial Management Regulation, volume 2A, chapter 1, provides guidelines for determining the correct appropriation to use when planning acquisitions.

Expenses and Investments. All costs are classified as either an expense or an investment. Expenses are costs of resources consumed in operating and maintaining DoD and are less than the currently approved dollar threshold of \$250,000 for expense and investment determinations. Investments are costs to acquire capital assets, such as real property and equipment, and are more than the currently approved dollar threshold of \$250,000 for expense and investment determinations. Costs budgeted in the operations and maintenance (O&M) appropriation are considered expenses. Costs budgeted in the procurement appropriation are considered investments. Costs budgeted in the research, development, test, and evaluation (RDT&E) appropriation include both expenses and investments.

Commercial Off-the-Shelf. All COTS purchases should be funded in the procurement or O&M appropriations, as determined by the expense and investment criteria.

Operations and Maintenance Appropriations. Expenses incurred in continuing operations and current services are budgeted in the O&M appropriations. Modernization costs less than \$250,000 are considered expenses, as are one-time projects, such as development of planning documents and studies. O&M funds are available for obligation for 1 year.

Procurement Appropriations. Acquisition and deployment of a complete system with a cost of \$250,000 or more is an investment and should be budgeted in a procurement appropriation. Complete system cost is the aggregate cost of all components that are part of, and function together as, a system to meet an approved requirement. Procurement funds are available for obligation for 3 years.

Research, Development, Test, and Evaluation Appropriations. RDT&E requirements, including designing prototypes and processes, should be budgeted in the RDT&E appropriations. In general, all developmental activities included in bringing a program to its objective system are to be budgeted in RDT&E. RDT&E funds are available for obligation for 2 years. Development of an information technology system is generally funded with RDT&E funds.

Compliance With Appropriation Laws and Regulations

Direct Acquisitions. We identified 32 direct acquisitions, with a total value of \$4.6 million, that potentially violated the BFNR. All of the 32 direct acquisitions were for commercial items readily available from other sources. Therefore, the items were required to be delivered during the fiscal year in which the funds were available for use. Delivery in the subsequent fiscal year could not be justified by procurement lead-time. DSC Philadelphia awarded 25 of the 32 delivery orders that potentially violated the BFNR during FY 2006 using FY 2005 O&M funds. The funds expired on September 30, 2005, but the 25 delivery orders were awarded on dates ranging from October 25, 2005, through March 6, 2006. The total value of the delivery orders DSC Philadelphia awarded that potentially violated the BFNR was \$2.9 million.

Funding officials at DSC Philadelphia believed it was permissible to use expired funds to award delivery orders in the subsequent fiscal year, as long as the funds were accepted before the end of the fiscal year. However, 31 U.S.C. 1502 states, “the balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability ... However, the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law.” Clearly, purchases made during FY 2006 do not represent expenses incurred during FY 2005. Therefore, the award of these 25 delivery orders with FY 2005 O&M funds potentially violated the Antideficiency Act. In addition, the DoD Financial Management Regulation states that O&M funds are available for new obligation for only 1 year. DoD contracting, financial, and accounting officials should be familiar with this limitation and should not have awarded those 25 orders using the expired O&M funds.

The seven other direct acquisitions, valued at \$1.7 million, also resulted in potential BFNR violations. SSC Charleston awarded four of the delivery orders, Defense Information Technology Contracting Office at Scott Air Force Base awarded two of the orders, and the Marine Corps Regional Contracting Office Southwest in Camp Pendleton awarded the remaining delivery order. These DoD contracting offices awarded the delivery orders at the end of the fiscal year but scheduled the delivery in the subsequent fiscal year when the funds were no longer available. The Red Book states the legal principle that when materials are delivered in the fiscal year subsequent to the fiscal year of the purchase, a violation of the BFNR has not occurred if the materials are not commercial items readily available from other sources, and the items have not been delivered due to delays in the production and fabrication, unforeseen delays, or for replacement of stock.

All items on the ECS III contracts were COTS; therefore, these seven purchases potentially violated the BFNR. When DoD makes COTS purchases, contracting officials should ensure that their customers provide funds available for use in the period in which the products will be delivered. If the Government did not need these items until FY 2007, as specified in the delivery order, then the purchase should have been made with funds that were available for use in FY 2007.

Appendix D describes these 32 potential ADA violations.

Assisted Acquisitions. Initially, we identified 12 assisted acquisitions with potential ADA violations. During the course of our audit, we informed personnel from the DoD Criminal Investigation Task Force that one of its task orders had a potential BFNR violation of \$1.9 million. The DoD Criminal Investigation Task Force took immediate corrective action and requested NIH to deobligate and return expired funds and to apply the appropriate funds to the appropriate invoices. We commend DoD Criminal Investigation Task Force management for their actions.

The remaining 11 assisted acquisitions had potential ADA violations of \$26.5 million. Specifically, DoD and NIH officials caused potential ADA violations valued at:

- \$1.4 million on three task orders, by potentially violating the purpose statute;
- \$23 million on seven task orders, by potentially violating the BFNR; and
- \$2.1 million on one task order, by potentially violating both the purpose statute and the BFNR.

Purpose Statute. DoD financial and accounting officials provided funding documents with the wrong appropriation to NIH contracting officials, resulting in four potential purpose statute violations. One of those task orders also potentially violated the BFNR. DoD customers funded these four task orders with O&M funds, but based on the task orders' scopes of work, RDT&E funds should have been used. These orders were for research and development work, and the DoD Financial Management Regulation states that development, test, and evaluation requirements, including designing prototypes and processes, should be budgeted in RDT&E appropriations. The purpose statute, 31 U.S.C. 1301, states that funds should only be used for their intended purpose. These four orders represent potential purpose statute violations of \$1.6 million.

Bona Fide Needs Rule. NIH financial and accounting officials paid contractors \$24.9 million for work performed outside the funds' period of availability for eight assisted acquisitions, resulting in potential BFNR violations. One of those orders also potentially violated the purpose statute. The violations occurred when NIH did not deobligate expired funds and used those funds to pay for work outside the funds' period of availability. The BFNR states that funds should only be used to pay for work performed during the funds' period of availability. In addition, 10 U.S.C. 2410a states that DoD can enter into a

contract for procurement of severable services that begins in one fiscal year and ends in the next fiscal year, if the contract period does not exceed 1 year. Therefore, when funding orders for severable services, funds that would normally expire at the end of the fiscal year may be used into the following fiscal year as long as those funds are tied to a period of performance that does not exceed 1 year.

Appendix D describes the 11 potential ADA violations.

Advanced Funding. Advanced funding includes the practice of permitting advanced billing without the receipt of goods or services. The Under Secretary of Defense (Comptroller)/Chief Financial Officer memorandum, “Advance Payment to Non-Department of Defense (DoD) Federal Agencies for Interagency Acquisitions,” March 1, 2007, provides guidance to all Military Departments and Defense agencies directing that DoD Components stop the practice of advancing funds to non-DoD Federal entities unless law, legislative action, or Presidential authorization specifically allows providing the funds in advance.

DoD used advanced funding for all of the assisted acquisitions made through NIH. According to the project manager of the finance office at the NIH Information Technology Acquisition and Assessment Center, NIH withdraws the entire amount of the MIPR once it accepts the MIPR from DoD. From March 1, 2007, through June 12, 2007, DoD sent NIH 31 MIPRs totaling \$30 million. NIH stated that contractors began providing information technology services and DoD customers received deliverables for these 31 MIPRs.

In the March 1, 2007, memorandum, the Under Secretary of Defense (Comptroller)/Chief Financial Officer required all DoD Components to take appropriate action to ensure DoD funds are not disbursed in advance of contract performance. Accordingly, we believe that existing advanced funds retained by a non-DoD Federal agency should be returned.

Funding Document Descriptions

TriCare Management Activity, Virginia, provided SSC Charleston with several MIPRs that contained broad descriptions of the goods to be purchased and were not specific as required by 31 U.S.C. 1501. This statute requires a binding agreement between two agencies in writing that states the specific goods to be delivered, real property to be bought or leased, or work or services to be provided. TriCare Management Activity funded 19 of the delivery orders we reviewed at SSC Charleston. The 19 orders had a total value of \$7.5 million. In all 19 cases, TriCare Management Activity provided SSC Charleston with a MIPR that was vague and general and did not provide details of the items intended to be purchased or did not provide a reference to a statement of work accompanying the funding document. To comply with the statute TriCare Management Activity should state the specific equipment being bought or refer to the statement of work associated with the contract or delivery order.

For example, SSC Charleston awarded delivery order N65236-06-F-2896 on September 15, 2006, for \$757,576. TriCare Management Activity funded the order with MIPR number DRAM 66006. The description on the MIPR stated, “FY 06 O&M funding for Network Protection site surveys, design, install, test and sustain IA [information assurance] devices worldwide.” The description on the funding document was vague and did not match the description provided for the delivery order. The project description on the delivery order stated that the equipment was in support of Juniper secure access appliances at various military hospitals. In addition, the MIPR did not refer to a statement of work where one could find more details related to the purpose of the MIPR. TriCare Management Activity officials stated that Juniper appliances were one of the devices in a network protection suite used to provide virtual private network connectivity between military treatment facilities and remote clinics. TriCare Management Activity was going to install the Juniper items to support the information assurance initiative worldwide. Therefore, SSC Charleston and TriCare Management Activity used the MIPR for its intended purpose. However, we were able to reach this conclusion only after meeting with TriCare Management Activity officials. TriCare Management Activity officials agreed with our conclusion and stated that in the future, they will provide more detailed descriptions in their MIPRs in order to avoid confusion.

It is important that requiring activities provide detailed descriptions of their intended purpose when they issue funding documents in order to provide a sound basis for the use of DoD funds. For supplies, we believe that the description should include a listing of the items, with specifications, to be procured. It should also specify the required quantities of each item, delivery requirements, and fund citations. If the description on the funding document is not detailed, then the requiring activities should reference an attached statement of work.

Conclusion

The potential ADA violations occurred primarily because contracting, financial, and accounting officials either did not know, misinterpreted, or did not follow the regulations related to funding. In some cases, DoD used the wrong funds to award the task orders. In other cases, DoD initially provided the correct funds, but NIH paid for work in a period of time beyond what was authorized by law. As a result, funds were not used for the purposes mandated by Congress.

Management Actions

During our audit, personnel in the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer took many actions to address the potential funding problems. We provided them with a written summary and support documentation for all the potential ADA violations that we identified. They disseminated that information to the DoD organizations that committed the potential violations and asked for a detailed review. Based upon that review, DoD organizations corrected or are in the process of correcting nine potential

violations. In addition, the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer initiated 27 formal investigations and determined 7 were not violations.

Management Comments on the Finding and Appendix D and Audit Response

U.S. Southern Command Comments. The Director of Programs and Resources stated that they have conducted an initial review of the potential ADAs for task orders 2054, 2228, and 2232 and determined that errors occurred in the billing/invoicing process. U.S. Southern Command is conducting a preliminary investigation on the potential ADA violations, which they plan to complete by December 21, 2007.

TriCare Management Activity Comments. TriCare Management Activity provided comments signed by the Acting Chief Financial Officer. The Acting Chief Financial Officer stated that TriCare Management Activity reviewed the three potential ADA violations we identified and determined that potential BFNR violations existed in the three instances. The Acting Chief Financial Officer also stated that TriCare Management Activity had corrected the three potential BFNR violations, and prepared and forwarded the supporting documentation to the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer and the Defense Finance and Accounting Service to make corrections.

Audit Response. The U.S. Southern Command has initiated a preliminary investigation while the TriCare Management Activity has taken preliminary action to correct its potential bona fide needs rule violations. If either action represents misuse of DoD funds, then the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer should take appropriate disciplinary action against those officials who are responsible for the violations. We plan to address this issue in greater detail with the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer in a forthcoming audit report addressing all the potential ADA violations.

Recommendation

We are not making recommendations to address the potential funding violations and advanced funding problems noted in this report. Such recommendations will be made in another report summarizing all funding problems we found during our audits of interagency contracting.

C. We recommend the Director, TriCare Management Activity comply with section 1501, title 31, United States Code and prepare funding documents that contain sufficient details or a reference to a statement of work specifying TriCare Management Activity's purchase requirement.

TriCare Management Activity Comments. The Acting Chief Financial Officer concurred. The Acting Chief Financial Officer stated that TriCare Management Activity will ensure that future funding documents contain sufficient details or a reference to a statement of work specifying purchase requirements.

D. Internal Control Deficiencies Identified in the Use of Non-DoD Contracts

DoD internal controls for interagency acquisitions were not effective when DoD used the NIH ECS III and CIO-SP2i multiple-award contracts. As of September 30, 2006, 112 contract actions with a contract ceiling price of \$257.4 million required a justification for use of a non-DoD contract. However, 110 of those contract actions were not properly justified. Specifically, DoD contract and program officials:

- did not justify 48 contract actions, potentially valued at \$156.7 million; and
- inadequately justified the use of a non-DoD contract for 62 contract actions, potentially valued at \$99.9 million.

DoD organizations did not implement or inadequately implemented DFARS 217.7802, which requires Military Departments and Defense agencies to develop a policy for justifying the use of a non-DoD contract. DoD implemented policies that provided insufficient detail regarding market research and documentation to support the assertion that the award was in the best interest of DoD. As a result, DoD contracting and program officials may have not obtained the best price available for their purchases.

Proper Use of Non-DoD Contracts

On October 29, 2004, the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics issued a policy memorandum, “Proper Use of Non-DoD Contracts,” to provide controls over interagency contracting. The memorandum requires Military Departments and Defense agencies to establish procedures for reviewing and approving the use of non-DoD contracts when procuring supplies and services on or after January 1, 2005, for amounts greater than the simplified acquisition threshold of \$100,000.

Internal Control Regulation

DFARS 217.7802, “Contracts or Delivery Orders Issued by a Non-DoD Agency.” This section implements the requirements of the Office of the Under

Secretary of Defense for Acquisition, Technology, and Logistics October 29, 2004, policy memorandum. DFARS 217.7802 requires Departments and agencies to implement procedures for:

- Evaluating whether using a non-DoD contract for the acquisition is in the best interest of DoD. Factors to be considered include:
 - Satisfying customer requirements;
 - Schedule;
 - Cost effectiveness ... ; and
 - Contract administration ...
- Determining that the tasks to be accomplished or supplies to be provided are within the scope of the contract to be used;
- Reviewing funding to ensure that it is used in accordance with appropriation limitations;
- Providing unique terms, conditions, and requirements to the assisting agency for incorporation into the order or contract as appropriate to comply with all applicable DoD-unique statutes, regulations, directives, and other requirements; and
- Collecting and reporting data on the use of assisted acquisition for analysis.

Justification for Using a Non-DoD Contract

DoD contracting and program officials did not prepare or inadequately prepared documentation justifying the use of non-DoD contracts. To comply with DFARS 217.7802, Military Departments and Defense agencies are required to justify that the use of a non-DoD contract is in the best interest of DoD.

NIH and DoD awarded 112 contract actions with a potential total ceiling price of \$257.4 million from January 1, 2005, through September 30, 2006, that had contract ceiling prices that were greater than the simplified acquisition threshold of \$100,000. Of these 112 contract actions, 81 were delivery orders awarded by DoD. The remaining 31 contract actions included base and option periods related to 22 task orders awarded by NIH. NIH awarded 9 of the 22 task orders before January 1, 2005; however, these 9 orders each included options that NIH exercised from January 1, 2005, through September 30, 2006. Because DoD and NIH awarded each of these 112 contract actions with values greater than \$100,000 after January 1, 2005, DFARS 217.7802 requires DoD to justify these contract actions. However, DoD contracting and program officials did not provide a justification for use of a non-DoD contract for 48 of the 112 contract actions with potential ceiling prices of \$156.7 million.

For example, Naval Air Systems Command Patuxent River did not provide a justification for using a non-DoD contract for four delivery orders valued at \$557,000. Naval Air Systems Command Patuxent River awarded these four orders after January 1, 2005, and each order was greater than the simplified acquisition threshold of \$100,000. Therefore, contracting officers should have

prepared a justification for using a non-DoD contract for those four orders. See Appendix E, Table E-1, for a list of direct acquisitions and Table E-2 for a list of assisted acquisitions that lacked justification.

DoD contracting and programming officials prepared justifications for the remaining 64 contract actions (of the 112). However, justifications for 62 contract actions, valued at \$99.9 million, were inadequate. These justifications were not sufficient to satisfy the DFARS 217.7802 requirement because the justifications were vague and did not contain sufficient details on the market research performed. See Appendix E, Table E-1, for a list of direct acquisitions and Table E-2 for a list of assisted acquisitions that had inadequate justifications.

For example, SSC Charleston could have saved \$219,633.46 on three delivery orders by using the General Services Administration Federal supply schedule, had they conducted more market research. In this case, another non-DoD contract was a better alternative; however, SSC Charleston personnel did not conduct adequate market research to justify using NIH. Therefore, SSC Charleston did not obtain the best value for its purchases.

Policy Implementation and Execution

DoD contracting and program officials did not implement or inadequately implemented DFARS 217.7802 when placing orders on non-DoD contracts. DFARS 217.7802 states that Military Departments and Defense agencies must establish procedures for reviewing and approving the use of non-DoD contract vehicles when procuring supplies and services on or after January 1, 2005, for amounts greater than the simplified acquisition threshold of \$100,000.

Of the 112 contract actions requiring justification, DoD did not justify 48 contract actions because DoD officials were unaware of the need to justify, did not believe it was necessary to justify, or forgot to justify the use of a non-DoD contract. DoD officials at nine organizations were unaware of the need to justify the use of a non-DoD contract. Six of these nine organizations did not have an organization policy on the proper use of non-DoD contracts. Personnel from the remaining three organizations, Marine Corps Systems Command Quantico, Marine Corps Regional Contracting Office Southwest Camp Pendleton, and DoD Criminal Investigation Task Force initially stated that they did not have or were unaware of the policy for the proper use of non-DoD contracts. However, personnel from those three organizations were later able to provide us with those policies. In addition, contracting officers at Naval Air Systems Command Patuxent River; Defense Information Technology Contracting Office Scott Air Force Base; and Aeronautical Systems Center, Directorate of Operational and Central Support Contracting Wright Patterson Air Force Base were aware of the requirements but did not consistently prepare a justification to use a non-DoD contract when it was required. The Defense Information Systems Agency did not implement its policy until January 20, 2006; therefore, contracting officers were unaware they were required to justify the use of a non-DoD contract for orders awarded prior to January 20, 2006. See Appendix E, Table E-1, for a list of direct acquisitions and Table E-2 for a list of assisted acquisitions that lacked proper justification.

For the 62 remaining contract actions requiring justification, DoD officials prepared inadequate justifications because DoD organizations developed and implemented ambiguous policies for properly using non-DoD contracts. These policies did not provide clear guidance on the methodology that program and contract officials should use to perform market research or to what extent market research should be conducted. In addition, the policies did not require contracting and program officials to provide details on the number or name of DoD contracts reviewed prior to determining that the use of a non-DoD contract was in the best interest of DoD or to document the basis for their conclusions.

For example, the Defense Information System Agency's policy did not provide the requirements office with specific guidance on how to justify the use of a non-DoD contract. The policy requires the requirements official to document that the use of a non-DoD contract/order is in the best interests of DoD and the Defense Information Systems Agency. The policy provides a justification document that has a section where summary data describes how information about direct acquisition is compiled and by whom. However, the policy contains no specific guidance on how the requirements office should conduct and document market research. The policy should require the officials to document the DoD contracts reviewed and why those contracts could not satisfy the requirement. If the officials concluded that no DoD contracts could satisfy the requirements, then the officials should explain how they arrived at that conclusion.

In another example, the policy used by Air Force Office of the Deputy Chief of Staff for Manpower and Personnel, Directorate of Manpower and Organization, Virginia, establishes responsibility for determining whether using a non-DoD contract is in the best interest of DoD. However, the procedures that DoD must follow to make this determination are insufficient. The key document in the approval process, the service designated official approval letter, does not require any explanation of why it is in DoD's best interest to use a non-DoD contract. The letter only provides basic information about the purchase, such as task order number, scope of work, contract type, type and year of funds, who will administer the contract, performance period, and Economy Act determination. Although the "use of non-DoD contracts checklist" did state that nonavailability of a suitable DoD contract should be addressed, the service designation official approval letter did not require an explanation for why it was not feasible to use a DoD contract.

Because of nonexistent or ambiguous policies on the proper use of non-DoD contracts, DoD organizations did not properly justify the use of NIH contracts.

Conclusion

The DoD October 29, 2004, Memorandum, implemented in DFARS 217.7802, requires Military Departments and Defense agencies to develop and implement policies for awarding orders on non-DoD contracts on or after January 1, 2005, for orders valued at more than the simplified acquisition threshold of \$100,000. However, more than 2 years later, some DoD organizations still did not know about the policy. DoD needs to ensure that DoD organizations implemented the requirements prescribed by the DoD October 29, 2004, Memorandum and DFARS 217.7802.

Also, the policies that DoD organizations implemented were insufficient and were executed inadequately and inconsistently. Therefore, contract files contain no documentation that DoD conducted market research to determine whether capable contractors under existing DoD contracts could have satisfied the requirement.

Management Actions

We previously reported similar results regarding DoD's implementation and execution of policies for justifying the use of non-DoD contracts in DoD IG Report No. D-2007-007, "FY 2005 DoD Purchases Made Through the General Services Administration," October 30, 2006, and in DoD IG Report No. D-2007-023, "FY 2005 DoD Purchases Made Through the National Aeronautics and Space Administration," November 13, 2006. Therefore, DoD officials are aware of the problem and are taking corrective action.

On October 16, 2006, the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer issued the "Non-Economy Act Orders" memorandum. The memorandum requires that warranted DoD contracting officers review all non-Economy Act orders greater than \$500,000 prior to sending the orders to the funds certifier or issuing the MIPR to a non-DoD activity. In addition, the Under Secretary of Defense for Acquisition, Technology, and Logistics, through the Director of Defense Procurement and Acquisition Policy, stated that his office is currently reviewing all training courses to ensure that they include courses on the proper use of non-DoD contracts. Accordingly, we are not making a recommendation in this report.

Appendix A. Scope and Methodology

We conducted this audit from August 2006 through August 2007 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We performed the audit as required by section 817 of Public Law 109-364, “John Warner National Defense Authorization Act for FY 2007,” October 17, 2006 (the Act). The Act requires the Inspectors General of the Department of Defense and the Department of Health and Human Services to conduct a joint review of interagency transactions between DoD and the National Institutes of Health (NIH). We reviewed DoD use of the NIH Electronic Commodities Store III (ECS III) and Chief Information Officer-Solutions and Partners 2 Innovations (CIO-SP2i) multiple-award contracting vehicles. The ECS III multiple-award contracting vehicle consisted of 66 contracts that were categorized into 6 information technology lots. The CIO-SP2i multiple-award contracting vehicle consisted of 45 contracts that were categorized into 9 information technology task areas. The ECS III and CIO-SP2i multiple-award contracts provide Government agencies access to information technology products and services.

ECS III. We did not jointly review the ECS III contracts with the Health and Human Services Office of the Inspector General because the interagency purchases were made through direct acquisition. That is, DoD contracting officials made all award decisions and funds for those purchases remained within DoD; as a result, NIH contracting, financial, and accounting officials had no involvement in the award process.

NIH provided us with a list of all FY 2006 direct purchases DoD made through NIH on the ECS III contracts, as of October 17, 2006. The list identified 1,158 orders DoD made on the ECS III, the CIO-SP2i, and the Image World2 New Dimensions contracts. We did not review the orders awarded on Image World2 New Dimensions contracts because DoD had awarded only four orders on the contract and only one of those orders was valued at more than \$100,000. We did not review the one direct acquisition task order awarded on the CIO-SP2i contracts because the order was funded with FY 2007 funds. The ECS III list included 1,153 contract actions* valued at \$38.6 million. We identified the contract actions that were valued at more than \$100,000 and used the DoD activity address code or the agency name to identify which DoD contracting office awarded the contract actions. Using this method, we identified 78 contract actions valued at \$24.6 million, which we organized by DoD organization and geographic area.

* The list counted each modification to an order as a separate order; therefore, we refer to the 1,153 line items as contract actions.

We selected geographical areas that had a large concentration of contract actions, which enabled us to visit the locations with numerous contract actions. As a result, we visited 12 DoD contracting offices that awarded 56 contract actions valued at \$20.4 million. These 56 contract actions consisted of 53 orders and 3 modifications. The value of the 53 orders represented 52.7 percent of the total value of the 1,153 contract actions identified by NIH. We reviewed an additional 29 orders, valued at \$9.9 million that were not included on the initial ECS III list. Of these 29 orders, we identified 24 orders valued at \$8.7 million through the DoD Electronic Document Access system, and DoD personnel at the sites we visited identified the remaining 5 orders valued at \$1.2 million.

We had a few deviations to our overall scope. At Defense Supply Center (DSC) Philadelphia, we reviewed 17 orders each valued at less than \$100,000, but totaling \$1.4 million, because DSC Philadelphia awarded 10 of the 17 orders within an 8-day period. We also reviewed four orders awarded in FY 2005 by three DoD sites that the ECS III list identified as being awarded in FY 2006. In addition, we reviewed an order that DoD awarded in FY 2005 but did not fund until FY 2006.

In total, our ECS III review included 12 DoD sites that awarded 98 orders valued at \$33.2 million.

We reviewed 98 ECS III order files maintained by DoD contracting offices to determine whether:

- DoD contracting officers provided a fair opportunity to contractors and documented source selection in accordance with Federal Acquisition Regulation (FAR) 16.505;
- DoD contracting officers or program officials adequately justified the use of a non-DoD contract for purchases in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 217.7802;
- DoD officials used the appropriate fund type for the items purchased in accordance with the DoD Financial Management Regulation, volume 2A, chapter 1, and the purpose statute, section 1301, title 31, United States Code (31 U.S.C. 1301); and
- DoD had a bona fide need for the requirement in accordance with the Red Book, and 31 U.S.C. 1502(a), which describe delivery requirements for purchases of commercial off-the-shelf (COTS) goods.

We interviewed DoD contracting officers, contracting specialists, program officials, and financial and accounting personnel involved in the procurement process.

CIO-SP2i. We jointly reviewed the CIO-SP2i contracts with the Health and Human Services Office of the Inspector General because NIH contracting officials obligated the Government by signing the task order and DoD funds for

those purchases were sent to NIH (assisted acquisition). As a result, DoD program, financial, and accounting officials along with NIH contracting, financial, and accounting officials participated in the award process.

NIH provided us with a list of all FY 2006 DoD MIPRs accepted by NIH for task orders awarded on the CIO-SP2i contracts. The CIO-SP2i list included 29 task orders with \$92.7 million in funding accepted in FY 2006.

We determined that one of the task orders was out of scope because NIH awarded the order in FY 2007 and our audit focused on funding and contract actions in FY 2006. We organized the remaining 28 task orders by DoD organization and geographic area. We determined that we would visit the DoD sites that were in the National Capital Region or located near DoD contracting offices that awarded ECS III orders. We identified 16 DoD organizations to visit that had 22 orders with \$84.7 million in MIPRs accepted by NIH in FY 2006, which represented 91.4 percent of the total dollar value of MIPRs accepted by NIH in FY 2006. These 22 orders had a potential task order ceiling value of \$621.5 million.

We conducted a limited review of the remaining six task orders because we did not visit the DoD organization that developed the requirement. The six task orders had \$6.1 million in MIPRs accepted by NIH in FY 2006, which represented 6.6 percent of the total dollar value of MIPRs accepted by NIH in FY 2006. These six orders had a ceiling price of \$76.1 million.

In total, we reviewed 28 task orders with \$90.9 million in funding accepted in FY 2006 and a potential task order ceiling value of \$697.6 million.

We reviewed 28 CIO-SP2i task order files maintained at the NIH contracting office to determine whether:

- NIH contracting officers reviewed the requirement for tasks not in the scope of the CIO-SP2i contracts;
- NIH contracting officers provided a fair opportunity to the CIO-SP2i contractors in the appropriate task areas and documented the source selection in accordance with FAR 16.505;
- DoD requiring officials documented their bid analysis, including price reasonableness of the awardees' proposal, and whether DoD recommended the appropriate contractor for award;
- DoD officials used the appropriate fund type for the items purchased in accordance with the DoD Financial Management Regulation, volumes 2A, chapter 1 and the purpose statute, 31 U.S.C. 1301; and
- DoD and NIH properly used DoD funds in accordance with the Under Secretary of Defense (Comptroller)/Chief Financial Officer memorandum, "Non-Economy Act Orders," October 16, 2006, which describes the use of funds for services crossing fiscal years,

and in accordance with 31 U.S.C. 1301, which codifies the BFNR.

Of the 28 CIO-SP2i task orders, we reviewed 22 task order files at the DoD site to determine whether:

- NIH contracting officers designated a DoD contracting officer representative in a letter and whether the DoD contracting officer representative was trained in accordance with DFARS 201.602-2;
- DoD contracting officer representatives conducted adequate contract oversight by developing quality assurance surveillance plans and documenting contractor performance in accordance with FAR 46.101 and FAR 42.15; and
- DoD requiring officials adequately justified the use of a non-DoD contract for purchases in accordance with DFARS 217.7802.

For all 28 task orders, we interviewed NIH contracting officers and NIH financial and accounting personnel involved in the procurement process. For the 22 task orders where we visited the DoD site, we also interviewed DoD contracting officer representatives, DoD requiring officials, and DoD financial and accounting personnel involved in the procurement process.

Use of Computer-Processed Data. NIH provided a list of all orders DoD awarded using the ECS III and CIO-SP2i contracting vehicles. The data for the ECS III direct acquisitions included the department or agency, the specific agency name, the order award date, the order number, and the award amount. The data for the CIO-SP2i assisted acquisitions included the department or agency, the specific agency name, the task order number, the task order award date, the MIPR number, and the MIPR amount. We did not perform a reliability assessment of the data NIH provided, but we identified the following discrepancies.

- The data excluded 29 orders awarded in FY 2006.
- The ECS III list contained the incorrect award date for 16 orders reviewed.
- The ECS III list contained the incorrect award amount for 59 orders that we reviewed.
- The ECS III list included 10 separate line items that represented just 4 orders that we reviewed.

These discrepancies did not affect the results of our audit because we verified the data when we reviewed the contract files and included the 29 excluded orders in our review.

Government Accountability Office High-Risk Area. The Government Accountability Office has identified several high-risk areas in DoD. This report provides coverage of the high-risk areas “DoD Contract Management” and “Management of Interagency Contracting.”

Appendix B. Prior Coverage

During the last 5 years, the Government Accountability Office (GAO), DoD Inspector General (IG), Army Audit Agency, and Air Force Audit Agency have issued 23 reports discussing interagency and information technology contracting. Unrestricted reports can be accessed over the Internet: GAO, <http://www.gao.gov>; DoD IG, <http://www.dodig.mil/audit/reports>; Army, <http://www.hqda.army.mil>; and Air Force, <http://www.afa.hq.af.mil>.

GAO

GAO Report No. GAO-05-456, “Interagency Contracting: Franchise Funds Provide Convenience, but Value to DoD is Not Demonstrated,” July 2005

GAO Report No. GAO-05-274, “Contract Management: Opportunities to Improve Surveillance on Department of Defense Service Contracts,” March 2005

GAO Report No. GAO-05-207, “High-Risk Series: An Update,” January 2005

GAO Report No. GAO-03-1069, “Budget Issues: Franchise Fund Pilot Review,” August 2003

GAO Report No. GAO-02-734, “Contract Management: Interagency Contract Program Fees Need More Oversight,” July 2002

DOD IG

DoD IG Report No. D-2007-098, “Use and Control of Intragovernmental Purchases at the Defense Intelligence Agency,” May 18, 2007

DoD IG Report No. D-2007-044, “FY 2005 DoD Purchases Made Through the Department of the Interior,” January 16, 2007

DoD IG Report No. D-2007-042, “Potential Antideficiency Act Violations on DoD Purchases Made Through Non-DoD Agencies,” January 2, 2007

DoD IG Report No. D-2007-032, “Report on FY 2005 DoD Purchases Made Through the Department of the Treasury,” December 8, 2006

DoD IG Report No. D-2007-023, “FY 2005 DoD Purchases Made Through the National Aeronautics and Space Administration,” November 13, 2006

DoD IG Report No. D-2007-007, “FY 2005 DoD Purchases Made Through the General Services Administration,” October 30, 2006

DoD IG Report No. D-2006-029, “Report on Potential Antideficiency Act Violations Identified During the Audit of the Acquisition of the Pacific Mobile Emergency Radio System,” November 23, 2005

DoD IG Report No. D-2005-096, “DoD Purchases Made Through the General Services Administration,” July 29, 2005

DoD IG Report No. D-2005-003, “DoD Antideficiency Act Reporting and Disciplinary Process,” October 14, 2004

DoD IG Report No. D-2004-084, “Antideficiency Act Investigation of the Research, Development, Test and Evaluation, Defense-Wide, Appropriation Account 97 FY 1989/1990 0400,” May 28, 2004

DoD IG Report No. D-2004-015, “Contracts for Professional, Administrative, and Management Support Services,” October 30, 2003

DoD IG Report No. D-2003-090, “Use and Control of Military Interdepartmental Purchase Requests at the Air Force Pentagon Communications Agency,” May 13, 2003

DoD IG Report No. D-2002-110, “Policies and Procedures for Military Interdepartmental Purchase Requests at Washington Headquarters Services,” June 19, 2002

DoD IG Report No. D-2002-109, “Army Claims Service Military Interdepartmental Purchase Requests,” June 19, 2002

Army Audit Agency

Army Audit Agency Report No. A-2004-0244-FFB, “Information Technology Agency Contract Management,” May 25, 2004

Army Audit Agency Report No. A-2002-0536-IMU, “Military Interdepartmental Purchase Requests - Logistics Assistance Group-Europe,” August 21, 2002

Air Force Audit Agency

Air Force Audit Agency Report No. F2004-0006-FBP000, “GSA Military Interdepartmental Purchase Requests, 353d Special Operations Group, Kadena AB, Japan,” November 10, 2004

Air Force Audit Agency Report No. F2004-0046-FBP000, “GSA Military Interdepartmental Purchase Requests, 390th Intelligence Squadron, Kadena AB, Japan,” August 11, 2004

Appendix C. Contracting Issues Identified

Table C-1. Direct Acquisition Orders

Order Number	Amount	Fair Opportunity Not Provided	Contract File Lacked Award Documentation
Fleet and Industrial Supply Center—San Diego, California			
N00244-06-F-0043	\$ 706,603.17	•	
N00244-06-F-0586	108,163.00	•	
N00244-06-F-0847	131,867.67	•	
Naval Air Systems Command—Patuxent River, Maryland			
N00421-06-F-0025	\$ 363,422.56		
N00421-06-F-0107	885,351.86	•	
N00421-06-F-0124	109,109.28	•	
N00421-06-F-0178	366,216.00	•	
N00421-06-F-0181	189,420.00	•	
N00421-06-F-0183	1,102,773.99	•	
N00421-06-F-0220	2,004,878.88	•	
N00421-06-F-0304	607,269.77	•	
N00421-06-F-0305	226,508.05	•	
N00421-06-F-0306	118,962.00		
N00421-06-F-0366	139,947.62		
Naval Research Laboratory National Capital Region—Washington, D.C.			
N00173-05-F-0837	\$ 391,581.04	•	•
N00173-05-F-0849	158,500.00	•	•
Space and Naval Warfare Systems Center—Charleston, South Carolina			
N62356-06-F-Q324	\$114,412.50	•	
N62356-06-F-0047	105,994.00	•	•
N62356-06-F-0757	190,557.88	•	•
N62356-06-F-1812	360,385.30	•	•
N62356-06-F-1879	1,086,934.35	•	
N62356-06-F-1953	2,384,614.00	•	•
N62356-06-F-2094	141,203.58	•	•
N62356-06-F-2131	260,683.50	•	•
N62356-06-F-2177	142,232.34	•	•
N62356-06-F-2179	197,497.00	•	•
N62356-06-F-2183	550,766.00	•	•
N62356-06-F-2211	341,518.34	•	•
N62356-06-F-2389	775,460.60	•	•
N62356-06-F-2393	146,298.25	•	•
N62356-06-F-2398	699,346.00	•	•
N62356-06-F-2608	177,786.26	•	
N62356-06-F-2865	251,762.00	•	•
N62356-06-F-2896	757,576.48	•	
N62356-06-F-2897	528,950.37	•	
N62356-06-F-2898	630,726.00	•	

Table C-1. Direct Acquisition Orders (cont'd)

Order Number	Amount	Fair Opportunity Not Provided	Contract File Lacked Award Documentation
Space and Naval Warfare Systems Center—Charleston, South Carolina (cont'd)			
N62356-06-F-3323	\$ 662,074.40	•	•
N62356-06-F-3691	224,630.64	•	•
N62356-06-F-3692	494,725.00	•	•
N62356-06-F-3839	128,100.00	•	
N62356-06-F-4314	179,784.44	•	•
N62356-06-F-4354	137,408.85	•	•
N62356-06-F-5023	228,625.20	•	•
N62356-06-F-5024	261,320.30	•	•
N62356-06-F-8071	155,483.00	•	•
Space and Naval Warfare Systems Center—San Diego, California			
N66001-06-F-Q057	\$ 159,340.00	•	
7N07	267,078.24	•	
7N09	611,377.00	•	
7N16	117,393.00	•	
7N17	123,656.00	•	
Marine Corps Regional Contracting Office Southwest—Camp Pendleton, California			
M00681-05-F-1111	\$ 205,900.00	•	
M00681-06-F-0034	985,270.25	•	
Marine Corps Systems Command—Quantico, Virginia			
M67854-06-F-4015	\$ 601,377.26	•	
M67854-06-F-4081	628,119.00	•	
M67854-06-F-4157	691,000.00	•	
M67854-06-F-4173	589,338.03	•	
M67854-06-F-4282	517,912.48	•	
Headquarters Air Force Materiel Command, Aeronautical Systems Center Directorate of Operational and Central Support Contracting—Wright-Patterson Air Force Base, Ohio			
FA8604-06-F-7569	\$ 110,504.15	•	
FA8604-06-F-7656	313,294.80	•	
Headquarters Air Mobility Command, Installations and Mission Support (A7)—Scott Air Force Base, Illinois			
FA4452-06-F-0061	\$ 388,815.00	•	
Defense Information Technology Contracting Office National Capital Region—Arlington, Virginia			
HC1047-06-F-4031	\$ 696,946.05	•	
HC1047-06-F-4144	296,923.46	•	
Defense Supply Center—Philadelphia, Pennsylvania			
SP0200-06-F-QA24	\$ 85,976.25	•	
SP0200-06-F-QA25	133,939.38	•	
SP0200-06-F-QA41	125,036.30	•	
SP0200-06-F-QA57	111,674.15	•	

Table C-1. Direct Acquisition Orders (cont'd)

Order Number	Amount	Fair Opportunity Not Provided	Contract File Lacked Award Documentation
Defense Supply Center—Philadelphia, Pennsylvania (cont'd)			
SP0200-06-F-QA83	\$ 78,936.55	•	
SP0200-06-F-QB45	155,957.49	•	•
SP0200-06-F-QB46	134,912.63	•	•
SP0200-06-F-QB47	113,238.70	•	•
SP0200-06-F-QB48	117,924.53	•	•
SP0200-06-F-QB50	367,119.85	•	
SP0200-06-F-QB60	130,069.25	•	•
SP0200-06-F-QB61	648,607.56	•	•
SP0200-06-F-QB62	491,426.33	•	•
SP0200-06-F-QB64	98,095.00	•	
SP0200-06-F-QB65	82,336.01	•	
SP0200-06-F-QB68	198,742.00	•	
SP0200-06-F-QB79	27,106.86	•	
SP0200-06-F-QB91	99,371.00	•	
SP0200-06-F-QB92	99,371.00	•	
SP0200-06-F-QC06	22,694.70	•	
SP0200-06-F-QC07	99,767.80	•	
SP0200-06-F-QC08	99,371.00	•	
SP0200-06-F-QC09	43,583.77	•	
SP0200-06-F-QC10	99,311.51	•	
SP0200-06-F-QC15	94,626.90	•	
SP0200-06-F-QC16	99,753.66	•	
SP0200-06-F-QC17	83,746.17	•	
SP0200-06-F-QC33	87,167.54	•	
SP0200-06-F-QC62	72,743.58	•	
Defense Information Technology Contracting Office—Scott Air Force Base, Illinois			
HC1013-06-F-2113	\$ 170,882.91	•	
HC1013-06-F-2402	232,533.00	•	
HC1013-06-F-2413	128,170.00	•	
HC1013-06-F-2415	423,484.00	•	
HC1013-06-F-2752	255,664.11	•	
HC1013-06-F-2757	260,300.00	•	
HC1013-06-F-2780	371,173.22	•	

Table C-2. Assisted Acquisition Orders

Order Number	Modified Task Order Ceiling Value	One Bid	Short Bid Time	Inadequate Price Analysis	Inadequate Surveillance	Services Not Within Scope	No Award Document
Pentagon Telecommunications Center—Arlington, Virginia							
2380	\$ 104,209,125		•				•
Defense Manpower Data Center—Arlington, Virginia							
2331	\$ 17,144,371				•		•
2376	36,185,568						•
Office of the Deputy Chief of Naval Operations for Information, Plans, and Strategy—Washington, D.C.							
2213	\$ 3,084,922	•	•	•			•
Headquarters Air Force Office of the Deputy Chief of Staff for Manpower and Personnel, Directorate of Manpower and Organization—Arlington, Virginia							
2480	\$ 12,387,490		•				•
Office of the Army Chief Information Office/(G-6), Office of Architecture, Operations, Network, and Space; Army Architecture Integration Cell—Arlington, Virginia							
2429	\$ 432,388		•		•		•
2517	2,353,874		•		•		•
DoD Criminal Investigation Task Force—Fort Belvoir, Virginia							
2361	\$ 19,962,866	•	•	•	•	•	•
Headquarters Air Force; Office of the Deputy Chief of Staff for Operations, Plans, and Requirements; Directorate of Executive Support—Arlington, Virginia							
2412	\$ 13,778,657	•	•	•	•		•
Headquarters Air Mobility Command, Communications (A6) —Scott Air Force Base, Illinois							
2513	\$ 536,616	•	•	•	•		•
Defense Technology Information Center—Fort Belvoir, Virginia							
2425	\$ 42,331,446	•	•	•	•		•
2503	30,626,984	•	•	•	•		•
Office of the Secretary of the Air Force; Financial Management, Information Systems and Technology Directorate—Wright-Patterson Air Force Base, Ohio							
2377	\$ 47,613,717		•		•		•
Headquarters Air Force Materiel Command, Communications (A6) —Wright-Patterson Air Force Base, Ohio							
2311	\$ 832,630	•	•	•			•
2315	9,134,999	•	•	•			•

Table C-2. Assisted Acquisition Orders (cont'd)

Order Number	Modified Task Order Ceiling Value	One Bid	Short Bid Time	Inadequate Price Analysis	Inadequate Surveillance	Services Not Within Scope	No Award Document
Joint Task Force-Global Network Operations—Arlington, Virginia							
2204	\$ 17,475,242		•		•		•
U.S. Army Research Laboratory, Program and Budget Office—Adelphi, Maryland							
2323	\$ 10,143,552		•				•
United States Southern Command—Miami, Florida							
2054	\$ 45,883,977				•		•
2228	82,188,561	•	N/A	•	•		•
Joint Interagency Task Force South—Key West, Florida							
2232	\$ 98,234,680	•	•	•		•	•
Defense Information Systems Agency; Manpower, Personnel, and Security Directorate—Arlington, Virginia							
2369	\$ 24,998,460	•	•	•	•		•
2512	1,916,356		•				•
Naval Education and Training Command*—Pensacola, Florida							
2215	\$ 17,476,698	•	•	•	Not Reviewed		•
Defense Logistics Agency, Defense, Defense Logistics Information Service*—Battle Creek, Michigan							
2406	\$ 455,045	•	•	•	Not Reviewed		•
Air Combat Command, 1st Air Force National Security Emergency Preparedness Directorate*—Tyndall Air Force Base, Florida							
2407	\$ 4,926,545	•	•	•	Not Reviewed		•
U.S. Army Special Operations Command*—Fort Bragg, North Carolina							
2409	\$ 49,702,025	•	•	•	Not Reviewed		•
United States Joint Forces Command*—Norfolk, Virginia							
2435	\$ 2,051,590		•		Not Reviewed		•
Office of the Assistant Secretary of Defense for Networks and Information Integration/DoD Chief Information Officer, Information Policy Directorate*—Arlington, Virginia							
2519	\$ 1,534,058	•	•	•	Not Reviewed	•	•

* We did not visit these DoD organizations. We reviewed the orders at the NIH contracting office.

Appendix D. Potential Antideficiency Act Violations

We identified 43 task and delivery orders with \$31.2 million in potential violations of the bona fide needs rule (BFNR) and the purpose statute that could result in Antideficiency Act (ADA) violations (Table D-1).

Table D-1. Summary of Potential ADA Violations

Type of Potential Violation	Number of Orders	Dollar Value
Bona Fide Needs Rule	39	\$27,654,099.86
Purpose Statute	3	1,387,637.78
Both	1	2,141,082.12
Total Potential ADA Violations	43	\$31,182,819.76

Direct Acquisition—Electronic Commodities Store III Orders

For the direct acquisitions—orders awarded on the Electronic Commodities Store (ECS III) contracts—we identified 32 potential ADA violations totaling \$4.6 million (Table D-2). These potential ADA violations were a result of potential BFNR violations caused by using expired funds to award orders and scheduling delivery or receiving goods in a fiscal year subsequent to the funds expiring. The Government Accountability Office *Principles of Federal Appropriations Law* (commonly known as the Red Book), third edition, volume I, chapter 5, section B.4 states the legal principle that delivery of commercial off-the-shelf (COTS) goods in a fiscal year subsequent to the funds expiring is a violation of the BFNR unless the delay in delivery is due to production or fabrication of the material, unforeseen delays, or replacement of stock. All items on the delivery orders we reviewed on the ECS III contracts were COTS information technology supplies. Therefore, goods purchased on the ECS III contracts are required to be delivered prior to the funds expiring.

The 32 orders that potentially violated the ADA were funded with either operations and maintenance (O&M) funds or procurement funds. O&M funds are available for obligation for 1 year and expire at the end of the fiscal year. Procurement funds are available for 3 years and expire at the end of the third fiscal year.

Table D-2. Summary of Potential ADA Violations for Direct Acquisitions

Type of Potential Violation	Number of Orders	Dollar Value
Bona Fide Needs Rule - expired funds	25	\$2,866,723.14
Bona Fide Needs Rule - delivery of goods in a FY subsequent to funds expiring	7	1,749,104.19
Total Potential ADA Violations for Direct Acquisitions	32	\$4,615,827.33

Army. The Defense Supply Center (DSC) Philadelphia awarded one order on behalf of the U.S. Army Medical Department Activity and 17 orders on behalf of the U.S. Army Dental Command (DENCOM) that potentially violated the BFNR.

1. **Delivery Order SP0200-06-F-QB46.** A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of the U.S. Army Medical Department Activity. DSC Philadelphia awarded the order on December 16, 2005, for \$134,912.63. The U.S. Army Medical Department Activity funded the order with FY 2005 Defense Health Program O&M Army funds that expired on September 30, 2005. DSC Philadelphia awarded the order in FY 2006, which was outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.
2. **Delivery Order SP0200-06-F-QA25.** A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of DENCOM. DSC Philadelphia awarded the order on December 13, 2005, for \$133,939.38. DENCOM funded the order with FY 2005 Defense Health Program O&M Army funds that expired on September 30, 2005. DSC Philadelphia awarded the order in FY 2006, which was outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.
3. **Delivery Order SP0200-06-F-QA41.** A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of DENCOM. DSC Philadelphia awarded the order on November 10, 2005, for \$129,036.30. DENCOM funded the order with FY 2005 Defense Health Program O&M Army funds that expired on September 30, 2005. DSC Philadelphia awarded the order in FY 2006, which was outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.
4. **Delivery Order SP0200-06-F-QA57.** A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of DENCOM. DSC Philadelphia awarded the order on November 14, 2005, for \$111,674.15. DENCOM funded the order with FY 2005 Defense Health Program O&M Army funds that expired on September 30, 2005. DSC Philadelphia awarded the order in FY 2006,

which was outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.

5. **Delivery Order SP0200-06-F-QB64.** A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of DENCOM. DSC Philadelphia awarded the order on January 4, 2006, for \$98,095. DENCOM funded the order with FY 2005 Defense Health Program O&M Army funds that expired on September 30, 2005. DSC Philadelphia awarded the order in FY 2006, which was outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.
6. **Delivery Order SP0200-06-F-QB65.** A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of DENCOM. DSC Philadelphia awarded the order on January 6, 2006, for \$82,336.01. DENCOM funded the order with FY 2005 Defense Health Program O&M Army funds that expired on September 30, 2005. DSC Philadelphia awarded the order in FY 2006, which was outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.
7. **Delivery Order SP0200-06-F-QB68.** A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of DENCOM. DSC Philadelphia awarded the order on February 1, 2006, for \$198,742. DENCOM funded the order with FY 2005 Defense Health Program O&M Army funds that expired on September 30, 2005. DSC Philadelphia awarded the order in FY 2006, which was outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.
8. **Delivery Order SP0200-06-F-QB91.** A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of DENCOM. DSC Philadelphia awarded the order on February 2, 2006, for \$99,371. DENCOM funded the order with FY 2005 Defense Health Program O&M Army funds that expired on September 30, 2005. DSC Philadelphia awarded the order in FY 2006, which was outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.
9. **Delivery Order SP0200-06-F-QB92.** A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of DENCOM. DSC Philadelphia awarded the order on February 3, 2006, for \$99,371. DENCOM funded the order with FY 2005 Defense Health Program O&M Army funds that expired on September 30, 2005. DSC Philadelphia awarded the order in FY 2006, which was outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.

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10. **Delivery Order SP0200-06-F-QC06.** A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of DENCOM. DSC Philadelphia awarded the order on February 1, 2006, for \$22,694.70. DENCOM funded the order with FY 2005 Defense Health Program O&M Army funds that expired on September 30, 2005. DSC Philadelphia awarded the order in FY 2006, which was outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.
 11. **Delivery Order SP0200-06-F-QC07.** A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of DENCOM. DSC Philadelphia awarded the order on February 1, 2006, for \$99,767.80. DENCOM funded the order with FY 2005 Defense Health Program O&M Army funds that expired on September 30, 2005. DSC Philadelphia awarded the order in FY 2006, which was outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.
 12. **Delivery Order SP0200-06-F-QC08.** A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of DENCOM. DSC Philadelphia awarded the order on February 1, 2006, for \$99,371. DENCOM funded the order with FY 2005 Defense Health Program O&M Army funds that expired on September 30, 2005. DSC Philadelphia awarded the order in FY 2006, which was outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.
 13. **Delivery Order SP0200-06-F-QC09.** A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of DENCOM. DSC Philadelphia awarded the order on February 1, 2006, for \$43,583.77. DENCOM funded the order with FY 2005 Defense Health Program O&M Army funds that expired on September 30, 2005. DSC Philadelphia awarded the order in FY 2006, which was outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.
 14. **Delivery Order SP0200-06-F-QC10.** A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of DENCOM. DSC Philadelphia awarded the order on February 1, 2006, for \$99,311.51. DENCOM funded the order with FY 2005 Defense Health Program O&M Army funds that expired on September 30, 2005. DSC Philadelphia awarded the order in FY 2006, which was outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.
 15. **Delivery Order SP0200-06-F-QC15.** A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of DENCOM. DSC Philadelphia awarded the order on February 3, 2006, for \$94,626.90. DENCOM funded the order with FY 2005 Defense Health Program O&M Army funds that expired on September 30, 2005. DSC Philadelphia awarded the order in FY 2006, which was

outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.

16. Delivery Order SP0200-06-F-QC16. A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of DENCOM. DSC Philadelphia awarded the order on February 3, 2006, for \$99,753.66. DENCOM funded the order with FY 2005 Defense Health Program O&M Army funds that expired on September 30, 2005. DSC Philadelphia awarded the order in FY 2006, which was outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.

17. Delivery Order SP0200-06-F-QC17. A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of DENCOM. DSC Philadelphia awarded the order on February 8, 2006, for \$83,746.17. DENCOM funded the order with FY 2005 Defense Health Program O&M Army funds that expired on September 30, 2005. DSC Philadelphia awarded the order in FY 2006, which was outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.

18. Delivery Order SP0200-06-F-QC33. A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of DENCOM. DSC Philadelphia awarded the order on March 6, 2006, for \$87,167.54. DENCOM funded the order with FY 2005 Defense Health Program O&M Army funds that expired on September 30, 2005. DSC Philadelphia awarded the order in FY 2006, which was outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.

Navy. DSC Philadelphia awarded four orders and Space and Naval Warfare Systems Center (SSC) Charleston awarded one order on behalf of the Navy that potentially violated the BFNR.

19. Delivery Order SP0200-06-F-QB45. A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of Naval Branch Health Clinic Portsmouth. DSC Philadelphia awarded the order on December 16, 2005, for \$155,957.49. Naval Branch Health Clinic Portsmouth funded the order with FY 2005 Defense Health Program O&M Navy funds that expired on September 30, 2005. DSC Philadelphia awarded the order in FY 2006, which was outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.

20. Delivery Order SP0200-06-F-QB47. A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of Naval Hospital Branch Clinic Marietta. DSC Philadelphia awarded the order on December 15, 2005, for \$113,238.70. Naval Hospital Branch Clinic Marietta funded the order with FY 2005 Defense Health Program O&M Navy funds that expired on September 30, 2005.

DSC Philadelphia awarded the order in FY 2006, which was outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.

21. **Delivery Order SP0200-06-F-QB48.** A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of Naval Hospital Bremerton. DSC Philadelphia awarded the order on December 16, 2005, for \$117,924.53. Naval Hospital Bremerton funded the order with FY 2005 Defense Health Program O&M Navy funds that expired on September 30, 2005. DSC Philadelphia awarded the order in FY 2006, which was outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.
22. **Delivery Order SP0200-06-F-QB60.** A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of Naval Medical Center Portsmouth. DSC Philadelphia awarded the order on December 30, 2005, for \$130,069.25. Naval Medical Center Portsmouth funded the order with FY 2005 Defense Health Program O&M Navy funds that expired on September 30, 2005. DSC Philadelphia awarded the order in FY 2006, which was outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.
23. **Delivery Order N65236-05-F-4314.** A potential BFNR violation occurred when SSC Charleston scheduled the delivery date for this order in a fiscal year after the funds expired. SSC Charleston awarded this order on behalf of the Naval Medical Information Management Center on September 23, 2006, for \$179,784.44. The scheduled delivery date was in the subsequent fiscal year, on October 26, 2006. The contractor delivered the goods between October 13, 2006, and December 12, 2006. Naval Medical Information Management Center funded the order with FY 2006 Defense Health Program O&M Navy funds that expired on September 30, 2006. Scheduling the delivery of COTS goods in a fiscal year after the funds expired potentially violates the BFNR.

Marines. Marine Corps Regional Contracting Office Southwest awarded one order on behalf of the Marines that potentially violated the BFNR.

24. **Delivery Order M00681-05-F-1111.** A potential BFNR violation occurred when Marine Corps Regional Contracting Office Southwest scheduled the delivery date in a fiscal year after the funds expired. Marine Corps Regional Contracting Office Southwest awarded this order on behalf of the 3rd Marine Aircraft Wing on September 23, 2005, for \$205,900. The scheduled delivery date was in the subsequent fiscal year, on October 21, 2005. The contractor delivered the goods on December 7, 2005. The 3rd Marine Aircraft Wing funded the order with FY 2005 O&M Marine Corps funds that expired on September 30, 2005. Scheduling the delivery of COTS goods in a fiscal year after the funds expired potentially violates the BFNR.

TriCare Management Activity. Space and Naval Warfare Systems Center Charleston awarded three orders on behalf of the TriCare Management Activity that potentially violated the BFNR.

25. **Delivery Order N65236-05-F-3691.** A potential BFNR violation occurred when SSC Charleston scheduled the delivery date for this order in a fiscal year after the funds expired. SSC Charleston awarded this order on behalf of the TriCare Management Activity on September 25, 2006, for \$224,630.64. The scheduled delivery date was in the subsequent fiscal year, on October 26, 2006. The contractor delivered the goods between October 3, 2006, and October 20, 2006. TriCare Management Activity funded the order with FY 2004 Defense Health Program Procurement Defense Medical Program Activity funds that expired on September 30, 2006. Scheduling the delivery of COTS goods in a fiscal year after the funds expired potentially violates the BFNR.
26. **Delivery Order N65236-05-F-3692.** A potential BFNR violation occurred when SSC Charleston scheduled the delivery date for this order in a fiscal year after the funds expired. SSC Charleston awarded this order on behalf of the TriCare Management Activity on September 25, 2006, for \$494,725. The scheduled delivery date was in the subsequent fiscal year, on October 25, 2006. The contractor delivered the goods between November 14, 2006, and January 3, 2007. TriCare Management Activity funded the order with FY 2004 Defense Health Program Procurement Defense Medical Program Activity funds that expired on September 30, 2006. Scheduling the delivery of COTS goods in a fiscal year after the funds expired potentially violates the BFNR.
27. **Delivery Order N65236-05-F-3839.** A potential BFNR violation occurred when SSC Charleston scheduled the delivery date for this order in a fiscal year after the funds expired. SSC Charleston awarded this order on behalf of the TriCare Management Activity on September 29, 2006, for \$128,100. The scheduled delivery date was in a subsequent fiscal year, on October 31, 2006. As of January 23, 2007, the goods had not been delivered. TriCare Management Activity funded the order with FY 2004 Defense Health Program Procurement Defense Medical Program Activity funds that expired on September 30, 2006. Scheduling the delivery of COTS goods in a fiscal year after the funds expired potentially violates the BFNR.

Armed Forces Institute of Pathology. DSC Philadelphia awarded three orders on behalf of the Armed Forces Institute of Pathology that potentially violated the BFNR.

28. **Delivery Order SP0200-06-F-QA24.** A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of the Armed Forces Institute of Pathology. DSC Philadelphia awarded the order on October 25, 2005, for \$85,976.25. The Armed Forces Institute of Pathology funded the order with FY 2005 Defense Health

Program O&M Army funds that expired on September 30, 2005. DSC Philadelphia awarded the order in FY 2006, which was outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.

29. **Delivery Order SP0200-06-F-QA83.** A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of the Armed Forces Institute of Pathology. DSC Philadelphia awarded the order on December 5, 2005, for \$78,936.55. The Armed Forces Institute of Pathology funded the order with FY 2005 Defense Health Program O&M Army funds that expired on September 30, 2005. DSC Philadelphia awarded the order in FY 2006, which was outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.
30. **Delivery Order SP0200-06-F-QB50.** A potential BFNR violation occurred when DSC Philadelphia awarded this order on behalf of the Armed Forces Institute of Pathology. DSC Philadelphia awarded the order on December 29, 2005, for \$367,119.85. The Armed Forces Institute of Pathology funded the order with FY 2005 Defense Health Program O&M Army funds that expired on September 30, 2005. DSC Philadelphia awarded the order in FY 2006, which was outside the funds' period of availability. Using expired FY 2005 funds for an order awarded in FY 2006 potentially violates the BFNR.

White House Communications Agency. Defense Information Technology Contracting Office Scott Air Force Base awarded two orders on behalf of the White House Communications Agency that potentially violated the BFNR.

31. **Delivery Order HC1013-06-F-2752 (CC200623340).** A potential BFNR violation occurred when the Defense Information Technology Contracting Office Scott Air Force Base scheduled the delivery date for this order in a fiscal year after the funds expired. The Defense Information Technology Contracting Office Scott Air Force Base awarded this order on behalf of the White House Communications Agency on September 7, 2006, for \$255,664.11. The scheduled delivery date was 30 days after receipt of the order, which was in the subsequent fiscal year, on October 7, 2006. The contractor shipped the goods on October 6, 2006. The White House Communications Agency funded the order with FY 2006 Defense-wide O&M funds that expired on September 30, 2006. Scheduling the delivery of COTS goods in a fiscal year after the funds expired potentially violates the BFNR.
32. **Delivery Order HC1013-06-F-2757 (CC200623380).** A potential BFNR violation occurred when the Defense Information Technology Contracting Office Scott Air Force Base received the goods for this order in a fiscal year after the funds expired. The Defense Information Technology Contracting Office Scott Air Force Base awarded this order on behalf of the White House Communications Agency on September 8, 2006, for \$260,300. No delivery date was scheduled on

the order. The contractor delivered the goods on October 17, 2006. The White House Communications Agency funded the order with FY 2006 Defense-wide O&M funds that expired on September 30, 2006. Receiving COTS goods in a fiscal year after the funds expired potentially violates the BFNR.

Assisted Acquisition—Chief Information Officer-Solutions and Partners 2 Innovations Orders

For the assisted acquisitions—orders awarded on the Chief Information Officer-Solutions and Partners 2 Innovations contracts—we identified 11 potential ADA violations totaling \$26.6 million (Table D-3). These potential ADA violations were a result of potential BFNR violations and purpose statute violations. The BFNR violations were caused by the National Institutes of Health (NIH) paying invoices for work performed outside a funds' period of availability. The purpose statute violations were caused by DoD using O&M funds instead of research, development, test, and evaluation (RDT&E) funds. All of the task orders we reviewed were for services.

We initially identified 12 assisted acquisitions with potential ADA violations. However, during our audit, personnel from the DoD Criminal Investigation Task Force took corrective action on its potential BFNR violation and asked NIH to deobligate and return expired funds and to apply the appropriate funds to the appropriate invoices.

Table D-3. Summary of Potential ADA Violations for Assisted Acquisitions

Type of Potential Violation	Number of Orders	Dollar Value
Bona Fide Needs Rule	7	\$23,038,272.53
Purpose Statute	3	1,387,637.78
Both	1	2,141,082.12
Total Potential ADA Violations for Assisted Acquisitions	11	\$26,566,992.43

Army. The NIH contracting office awarded one order on behalf of the Pentagon Telecommunications Center and two orders on behalf of the Office of the Army Chief Information Officer/G-6; Office of Architecture, Operations, Network, and Space; Army Architecture Integration Cell (Army G-6) that potentially violated the ADA. One order potentially violated the BFNR and two orders potentially violated the purpose statute.

33. **Task Order 2380.** A potential BFNR violation occurred when NIH used \$3,220,571.65 of DoD funds to pay for work performed outside the funds' period of availability. NIH awarded this order on behalf of the Pentagon Telecommunications Center on February 23, 2005. The period of performance for this task order was February 23, 2005,

through February 22, 2010. The base period was from February 23, 2005, through February 22, 2006, with four 12-month option periods from February 23, 2006, through February 22, 2010.

The Pentagon Telecommunications Center funded the order with FY 2005 and FY 2006 Army O&M funds. Military interdepartmental purchase requests (MIPR) for O&M funds obligated within a period of performance were available to pay for work performed within that base or option period, not to exceed 1 year from the funds' expiration date.

For example, NIH accepted MIPR5LNIHIT058 on September 9, 2005. MIPR5LNIHIT058 provided FY 2005 O&M funds of \$996,209.71 for services. Because NIH accepted MIPR5LNIHIT058 in the base period, these FY 2005 O&M funds were tied to the base period of performance, which occurred from February 23, 2005, through February 22, 2006. Therefore, the \$996,209.71 in FY 2005 O&M funds were available to pay for work performed through February 22, 2006.

However, NIH used \$602,759.22 in FY 2005 O&M funds from MIPR5LNIHIT058 to pay for work performed outside the funds' period of availability. The contractor billed for the \$602,759.22 on portions of invoices 17452, 17515, and 17514. The dates of service for these invoices were from May 1, 2006, through May 31, 2006; July 1, 2006, through July 31, 2006; and July 1, 2006, through July 31, 2006; respectively. These dates fall outside the funds' period of availability, which was from February 23, 2005, through February 22, 2006. Therefore, NIH should not have used the \$602,759.22 in FY 2005 O&M funds provided on MIPR5LNIHIT058 to pay invoices 17452, 17515, and 17514.

From February 2005 through March 2006, the Pentagon Telecommunications Center provided \$15,818,261 in FY 2005 and FY 2006 O&M funds on 11 MIPRs and their amendments. Invoices received as of April 11, 2007, totaled \$13,489,378.06. In total, NIH paid \$3,220,571.65 in invoices for work performed outside the funds' period of availability. This consisted of FY 2005 O&M funds provided on MIPR5HNIHIT059 (\$2,463,477.83); MIPR5LNIHIT083, (\$38,064); MIPR5LNIHIT058 (\$602,759.22); and \$116,270.60 in FY 2006 O&M funds provided on MIPR6CNIHIT012. The \$3,220,571.65 represents a potential BFNR violation.

As of April 11, 2007, the balance of MIPR5HNIHIT059 was \$15,768.24; the balance of MIPR5LNIHIT058 was \$11,466.64; and the balance of MIPR6CNIHIT012 was \$792,704.71. MIPR5HNIHIT059 and MIPR5LNIHIT058 were for FY 2005 O&M funds that were tied to the base period of performance, which was from February 23, 2005, through February 22, 2006. Because the period of availability for these funds has ended, NIH should deobligate the \$27,234.88 in FY 2005 O&M funds. MIPR6CNIHIT012 was for

FY 2006 O&M funds that were tied to the option 1 period of performance, which was from February 23, 2006, through February 22, 2007. Because the period of availability for these funds has ended, NIH should deobligate the \$792,704.41 in FY 2006 O&M funds. NIH should deobligate a total of \$819,939.59 in O&M funds associated with this task order.

34. **Task Order 2429.** A potential purpose statute violation occurred when DoD funded an order with \$432,388 of O&M funds instead of RDT&E funds. NIH awarded this order on behalf of Army G-6 on September 21, 2005. Army G-6 used FY 2006 Army O&M funds for the task order. The statement of work for the task order stated, “The purpose of this Task Order is to produce an Architecture Development Plan ...” and “The scope of this task is to develop the vision and detailed processes that would be implemented in Phase II to develop and integrate the Operational, System and Technical Views (OV, SV, and TV) of the enterprise architecture for the 2014 Modular Force.” Because the task order was for development, Army G-6 should have used RDT&E funds; however, Army G-6 personnel stated that their organization had only O&M funds available to use for this task order. Using the wrong appropriation to fund the task order is a potential violation of the purpose statute.

35. **Task Order 2517.** A potential purpose statute violation occurred when DoD funded an order with \$391,634.15 of O&M funds instead of RDT&E funds. NIH awarded this order on behalf of Army G-6 on September 29, 2006. Army G-6 used FY 2006 Army O&M funds for this order. The statement of work for the task order stated that task 1 was to provide support, including “development/procurement of tools, processes, governance, and metrics for Army-wide SOA [service-oriented architecture] implementation through a series of pilot initiatives.” For task 2, it stated that the purpose was “to work the first pilot project through implementation at a testing facility to demonstrate the potential benefit of the SOA approach ... develop/create a comprehensive prototype solution.”

Because the task order was for development, pilot initiatives, and implementation of a test facility, the Army G-6 should have used RDT&E funds for this task order; however, Army G-6 personnel stated that their organization had only O&M funds available to use for this task order. Using the wrong appropriation to fund the task order is a potential violation of the purpose statute.

Air Force. The NIH contracting office awarded one order on behalf of the Headquarters Air Force Material Command, Communications; one order on behalf of the Office of the Secretary of the Air Force, Financial Management Information Systems and Technology directorate (the AF FM Directorate); and one order on behalf of the Headquarters Air Mobility Command, Communications that potentially violated the ADA. Two orders potentially violated the BFNR and one order potentially violated the purpose statute.

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36. **Task Order 2315.** A potential BFNR violation occurred when NIH used \$260,540.97 of DoD funds to pay for work performed outside the funds' period of availability. NIH awarded this order on behalf of the Headquarters Air Force Material Command, Communications on May 19, 2004. The period of performance indicated on the original task order was from May 19, 2004, through December 31, 2006. However, NIH exercised option period 1 earlier than indicated on the original task order. The base period occurred from May 19, 2004, through September 21, 2004. Option period 1 occurred from September 22, 2004, through September 21, 2005. Option period 2 occurred from September 22, 2005, through March 31, 2007.

The Headquarters Air Force Material Command, Communications funded the order with FY 2004 through FY 2007 Air Force O&M funds. MIPRs for O&M funds obligated within a period of performance were available to pay for work performed within that base or option period, not to exceed 1 year from the funds' expiration date.

For example, NIH accepted MIPR NGMSC000571007 on March 21, 2005. NGMSC000571007 provided FY 2005 O&M funds of \$975,625 for services. Because NIH accepted NGMSC000571007 in option period 1, these FY 2005 O&M funds were tied to the option 1 period of performance, which occurred from September 22, 2004, through September 21, 2005. However, the period of availability for the funds was October 1, 2004, through September 30, 2005. Therefore, the \$975,625 in FY 2005 O&M funds were available to pay for work performed during FY 2005.

However, NIH used \$144,635.78 in FY 2005 O&M funds from NGMSC000571007 to pay for work performed outside the funds' period of availability. The contractor billed the \$144,635.78 on invoice 880370. The dates of service for that invoice were from October 1, 2005, through October 31, 2005. These dates fall outside the funds' period of availability. Therefore, NIH should not have used the \$144,635.78 in FY 2005 O&M funds provided on NGMSC000571007 to pay this invoice.

From May 2004 through December 2006, the Headquarters Air Force Material Command, Communications provided \$7,067,792.91 in FY 2004 through FY 2007 O&M funds on eight MIPRs and their amendments. Invoices received as of February 28, 2007, totaled \$5,973,095.10. In total, NIH paid \$260,540.97 in invoices for work performed outside the funds' period of availability. This consisted of \$10,366.74 in FY 2004 O&M funds on NGAFSCA0471046; \$144,635.78 in FY 2005 O&M funds on NGMSC000571007; and \$105,538.45 in FY 2005 O&M funds on F4FFCP5074GG01. The \$260,540.97 represents a potential BFNR violation.

37. **Task Order 2377.** A potential BFNR violation occurred when NIH used \$143,763.15 of DoD funds to pay for work performed outside the

funds' period of availability. NIH awarded this order on behalf of the AF FM Directorate on February 3, 2005. The period of performance for this task order was February 21, 2005, through February 20, 2010. The base period was from February 21, 2005, through February 20, 2006, with four 12-month option periods from February 21, 2006, through February 20, 2010.

The AF FM Directorate funded the order with FY 2005 through FY 2007 Air Force O&M funds. MIPRs for O&M funds obligated within a period of performance were available to pay for work performed within that base or option period, not to exceed 1 year from the funds' expiration date.

For example, NIH accepted MIPR NGFMPT00571010 and its amendments on February 7, 2005; March 21, 2005; and September 26, 2005. NGFMPT00571010 and its amendments provided FY 2005 O&M funds of \$5,696,585.37 for services. Because NIH accepted NGFMPT00571010 in the base period, these FY 2005 O&M funds were tied to the base period of performance, which occurred from February 21, 2005, through February 20, 2006. Therefore, the \$5,696,585.37 in FY 2005 O&M funds were available to pay for work performed through February 20, 2006.

However, NIH used \$62,635.85 in FY 2005 O&M funds from NGFMPT00571010 to pay for work performed outside the funds' period of availability. The contractor billed for the \$62,635.85 on invoice 1-434483. The dates of service for this invoice were February 21, 2006, through February 24, 2006. These dates fall outside the funds' period of availability, which was from February 21, 2005, through February 20, 2006. Therefore, NIH should not have used the \$62,635.85 in FY 2005 O&M funds provided on NGFMPT00571010 to pay for the invoice.

From February 2005 through March 2007, the Secretary of the Air Force Financial Management Information Systems and Technology directorate provided \$13,762,137.37 in FY 2005 through FY 2007 O&M funds on four MIPRs and their amendments. Invoices received as of April 26, 2007, totaled \$13,325,014.34. In total, NIH paid \$143,736.15 in invoices for work performed outside the funds' period of availability. This consisted of \$62,635.85 in FY 2005 O&M funds provided on NGFMPT00571010; \$54,005.02 in FY 2006 O&M funds provided on F4FTCB6026G001; and \$27,095.28 in FY 2006 O&M funds provided on F4FTCB6250G003. The \$143,736.15 represents a potential BFNR violation.

As of April 26, 2007, the balance of NGFMPT00571010 was \$32,680.97. These are FY 2005 O&M funds tied to the base period of performance, which was from February 21, 2005, through February 20, 2006. Because this period of performance ended and all invoices for that period of performance were accrued, NIH should deobligate the \$32,680.97 in FY 2005 O&M funds. As of April 26, 2007, the

balance of F4FTCB6026G001 was \$44,601.94. These are FY 2006 O&M funds tied to the option 1 period of performance, which was from February 21, 2006, through February 20, 2007. Because this period of performance ended and all invoices for that period were accrued, NIH should deobligate the \$44,601.94 in FY 2006 O&M funds. NIH should deobligate a total of \$77,282.91 in O&M funds associated with this task order.

38. **Task Order 2513.** A potential purpose statute violation occurred when DoD funded an order with \$563,615.63 of O&M funds instead of RDT&E funds. NIH awarded this order on behalf of the Headquarters Air Mobility Command, Communications on September 20, 2006. The Headquarters Air Mobility Command, Communications used FY 2006 and FY 2007 Air Force O&M funds for the task order.

The statement of work for the task order was for design, analysis, and initial pilot effort for the Air Mobility Command enterprise information management system. This system will consist of multiple COTS applications integrated to fulfill all of the system's functions over four phases. This task order is for work associated with phase one, which is to deploy the enterprise information management effort to a pilot group within Headquarters Air Mobility Command, Communications. Tasks 2 through 8 in the statement of work for phase 1 include RDT&E activities such as researching, developing, designing, prototyping, testing, and evaluating. Specifically, the statement of work uses the word "design" 54 times, the word "develop" 24 times, the word "prototype" 11 times, the word "pilot" 24 times, the word "integrate" 15 times, the word "test" 39 times, and the word "evaluate" 5 times.

An Air Force official stated that the statement of work used the incorrect verbiage and that the contractor actually only configured the COTS application and did not modify the application or change the code in the application. However, the statement of work requires the contractor to perform software coding, specifically in tasks 3 through 7.

The Under Secretary of Defense (Comptroller)/Chief Financial Officer memorandum, "Clarification of Policy—Budgeting for Information Technology and Automated Information Systems," October 26, 1999, states, "Commercial-off-the-shelf (COTS) systems that require engineering design, integration, test and evaluation to achieve the objective performance will be budgeted in RDT&E." In addition, the memorandum notes that only COTS "items bought as end-items (i.e., no changes are needed) will be funded in either Procurement or O&M subject to the expense/investment criterion."

The performance objective of the Headquarters Air Mobility Command, Communications is to have a complete enterprise information management, which consists of several configured,

integrated, tested, and evaluated COTS applications. Therefore, the Air Force should fund each phase of the project with RDT&E funds. Using the wrong appropriation to fund the task order is a potential violation of the purpose statute.

United States Southern Command. The NIH contracting office awarded two orders on behalf of the United States Southern Command that potentially violated the BFNR.

39. **Task Order 2054.** A potential BFNR violation occurred when NIH used \$11,836,449.10 of DoD funds to pay for work performed outside the funds' period of availability. NIH awarded this order on behalf of the United States Southern Command on October 1, 2001. The period of performance for this task order was October 1, 2001, through September 30, 2006. The base period was from October 1, 2001, through September 30, 2002, with four 12-month option periods from October 1, 2002, through September 30, 2006.

The United States Southern Command funded the order with FY 2002 through FY 2006 Army O&M funds. MIPRs for O&M funds obligated within a period of performance were available to pay for work performed within that base or option period. The funds were available for use in the following option period if they were 2-year Global War on Terrorism O&M funds in their first year of availability. MIPR2G21C60044 and its amendment provided FY 2002 O&M 1-year funds of \$464,091.12 for services. Because NIH accepted MIPR2G21C60044 and its amendment in the base period, these FY 2002 O&M 1-year funds were tied to the base period of performance, which occurred from October 1, 2001, through September 30, 2002. Therefore, the \$464,091.12 in FY 2002 O&M 1-year funds were available to pay for work performed through September 30, 2002.

However, NIH used the \$464,091.12 in FY 2002 O&M 1-year funds from MIPR2G21C60044 to pay for work performed outside the funds' period of availability. The contractor billed for the \$464,091.12 on invoices 23, 24, and 015-2005-A. The dates of service for these invoices were from August 9, 2003, through August 22, 2003; August 23, 2003, through September 5, 2003; and January 29, 2005, through February 25, 2005; respectively. These dates fall outside the funds' period of availability, which was from October 1, 2001, through September 30, 2002. Therefore, NIH should not have used the \$464,091.12 in FY 2002 O&M 1-year funds provided on MIPR2G21C60044 to pay invoices 23, 24, and 015-2005-A.

From November 2001 through July 2006, the United States Southern Command provided \$41,851,242.15 in FY 2002 through FY 2006 O&M 1-year funds and FY 2002 O&M 2-year funds on 19 MIPRs and their amendments, \$2,839,736.04 of which was FY 2002 O&M 2-year funds. Invoices received through December 8, 2006, totaled \$40,289,624.28. In total, NIH paid \$11,836,449.10 in invoices for

work performed outside the funds' period of availability.
See Table D-4 for details on the funds used.

Table D-4. Summary of Funds Used Outside Availability

MIPR Number	Type of Funds/Period Of Availability	Invoice Amount
MIPR2A97D60001	FY 2002 O&M 1-year funds	\$101,340.00
MIPR2G21C60044	FY 2002 O&M 1-year funds	464,091.12
MIPR2K11H6J221	FY 2002 O&M 1-year funds	24,451.00
MIPR2M97D60059	FY 2002 O&M 1-year funds	245,00.00
MIPR2M97G60100	FY 2002 O&M 2-year funds	425,435.04
MIPR3A21G65001	FY 2003 O&M 1-year funds	2,247,508.71
MIPR3F21G6K112	FY 2003 O&M 1-year funds	567,498.11
MIPR3J21G6K194	FY 2003 O&M 1-year funds	291,936.35
MIPR4A21G6S007	FY 2004 O&M 1-year funds	1,335,194.80
MIPR4D21G6K090	FY 2004 O&M 1-year funds	1,065,26.00
MIPR4D21G6K091	FY 2004 O&M 1-year funds	1,009,005.07
MIPR5A21G60027	FY 2005 O&M 1-year funds	3,249,728.90
MIPR5M21G60055	FY 2005 O&M 1-year funds	810,000.00

The \$11,836,449.10 represents a potential BFNR violation.

As of December 8, 2006, the balance of MIPR2A97D6001 was \$701 and the balance of MIPR5M21G6K020 was \$1,560,916.87. Because this contract ended on September 30, 2006, and all invoices have been accrued, NIH should deobligate the \$1,561,617.87 in O&M funds associated with this task order.

40. **Task Order 2228.** A potential BFNR violation occurred when NIH used \$5,118,457.85 of DoD funds to pay for work performed outside the funds' period of availability. NIH awarded this order on behalf of the United States Southern Command on June 1, 2003. The period of performance for this task order was June 1, 2003, through April 30, 2008. The base period was from June 1, 2003, through April 30, 2004, with four 12-month option periods from May 1, 2004, through April 30, 2008.

The United States Southern Command funded the order with FY 2003 through FY 2006 Army O&M funds. MIPRs for O&M funds obligated within a period of performance were available to pay for work performed within that base or option period.

For example, NIH accepted MIPR3H21G6K170 on June 17, 2003. MIPR3H21G6K170 provided FY 2003 O&M funds of \$9,539,826.80 for services. Because NIH accepted MIPR3H21G6K170 in the base period, these FY 2003 O&M funds were tied to the base period of performance, which occurred from June 1, 2003, through April 30, 2004. Therefore, the \$9,539,826.80 in FY 2003 O&M funds were available to pay for work performed through April 30, 2004.

However, NIH used \$1,809,879.80 in FY 2003 O&M funds from MIPR3H21G6K170 to pay for work performed outside the funds' period of availability. The contractor billed for the \$1,809,879.80 on portions of invoices 11, 12, and 13. The dates of service for these invoices were from May 1, 2004, through May 28, 2004; May 29, 2004, through July 2, 2004; and July 3, 2004, through July 30, 2004; respectively. These dates fall outside the funds' period of availability, which was from June 1, 2003, through April 30, 2004. Therefore, NIH should not have used the \$1,809,879.80 in FY 2003 O&M funds provided on MIPR3H21G6K170 to pay for invoices 11, 12, and 13.

From June 2003 through September 2006, the United States Southern Command provided \$44,987,256.80 in FY 2003 through FY 2005 O&M funds on four MIPRs and their amendments. Invoices received as of March 23, 2007, totaled \$37,317,097.47. In total, NIH paid \$5,118,457.85 in invoices for work performed outside the funds' period of availability. This consisted of \$1,809,879.80 of FY 2003 O&M funds provided on MIPR3H21G6K170; \$994,611.41 in FY 2004 O&M funds provided on MIPR4G14G6U138; and \$2,313,966.64 of FY 2005 O&M funds provided on MIPR5G21G60039. The \$5,118,457.85 represents a potential BFNR violation.

As of March 23, 2007, the balance of MIPR6G21G6K034 was \$7,670,159.33. These are FY 2006 O&M funds tied to the option 3 period of performance, which was from May 1, 2006, through April 30, 2007. Once NIH pays all invoices for work performed through April 30, 2007, NIH should deobligate the remaining balance of MIPR6G21G6K034.

Defense Information Systems Agency. The NIH contracting office awarded an order on behalf of the Defense Information Systems Agency, Manpower, Personnel, and Security Directorate that potentially violated the BFNR.

41. **Task Order 2369.** A potential BFNR violation occurred when NIH used \$1,164,029.84 of DoD funds to pay for work performed outside the funds' period of availability. NIH awarded this order on behalf of Defense Information Systems Agency, Manpower, Personnel, and Security Directorate on January 27, 2005. The period of performance for this task order was January 27, 2005, through January 26, 2010. The base period was from January 27, 2005, through January 26, 2006, with four 12-month option periods from January 27, 2006, through January 26, 2010.

The Defense Information Systems Agency, Manpower, Personnel, and Security Directorate funded the order with FY 2004 and FY 2005 Defense-wide RDT&E funds. MIPRs for RDT&E funds obligated within a period of performance were available to pay for work performed within that base or option period. The funds were available for use in the following option period if they were in their first year of availability at the time of obligation.

NIH accepted MIPR W81W3G50194972 on February 1, 2005. W81W3G50194972 provided FY 2004 RDT&E funds of \$4,000,000 for services. Because NIH accepted W81W3G50194972 in the base period and these funds were in their second year of availability, these FY 2004 RDT&E funds were tied to the base period of performance, which occurred from January 27, 2005, through January 26, 2006. Therefore the \$4,000,000 in FY 2004 RDT&E funds were available to pay for work performed through January 26, 2006.

However, NIH used \$1,164,029.84 in FY 2004 RDT&E funds from W81W3G50194972 to pay for work performed outside the funds' period of availability. The contractor billed for \$1,164,029.84 on portions of invoices 12, 01, 02, 150456, 169180, and 200717. The dates of service for these invoices were from January 27, 2006, through January 31, 2006; January 27, 2006, through February 28, 2006; March 1, 2006, through March 31, 2006; April 1, 2006, through April 30, 2006; May 1, 2006, through May 31, 2006; and September 1, 2006, through September 30, 2006, respectively. These dates fall outside the funds' period of availability, which was from January 27, 2005, through January 26, 2006. Therefore, NIH should not have used the \$1,164,029.84 in FY 2004 RDT&E funds from W81W3G50194972 to pay for those invoices.

From February 2005 through August 2006, the Defense Information Systems Agency, Manpower, Personnel, and Security Directorate provided \$7,000,000 in FY 2004 and FY 2005 RDT&E funds on two MIPRs. Invoices received as of January 9, 2007, totaled \$5,737,804.72. In total, NIH paid \$1,164,029.84 in invoices for work performed outside the funds' period of availability. The \$1,164,029.84 represents a potential BFNR violation.

As of December 8, 2006, the balance of W81W3G60091577 was \$1,839,273.92, for work performed through October 31, 2006. Including two invoices for work performed in November and December 2006, the MIPR balance was \$1,262,195.28. These are FY 2005 RDT&E funds tied to the option 1 period of performance, which was from January 27, 2006, through January 26, 2007. Once NIH pays all invoices for work performed through January 26, 2007, NIH should deobligate the remaining balance of W81W3G60091577.

Joint Task Force–Global Network Operations. The NIH contracting office awarded an order on behalf of the Joint Task Force–Global Network Operations that potentially violated both the BFNR and the purpose statute.

42. **Task Order 2204.** A potential BFNR violation occurred when NIH used \$1,884,739.12 of DoD funds to pay for work performed outside the funds' period of availability. NIH awarded this order on behalf of Joint Task Force–Global Network Operations on September 30, 2002. The period of performance for this task order was September 30, 2002,

through September 29, 2008. The base period was from September 30, 2002, through September 29, 2004, with four 12-month option periods from September 30, 2004, through September 29, 2008.

Joint Task Force–Global Network Operations funded the order with FY 2002 through FY 2007 Air Force O&M funds. MIPRs for O&M funds obligated within a period of performance were available to pay for work within that base or option period. However, when a MIPR description identifies the period of performance to which the MIPR applies, the MIPR should be used only for work performed during the period of performance listed or until the funds would normally expire. For both scenarios, the funds’ period of availability should not exceed 1 year from the funds’ expiration date.

For example, NIH accepted MIPR F1AT1X4308G001 and its amendments on November 22, 2004; March 21, 2005; April 8, 2005; and August 30, 2005. F1AT1X4308G001 and its amendments provided FY 2005 O&M funds totaling \$2,148,459 for services. Because NIH accepted F1AT1X4308G001 and its amendments in option period 1, these FY 2005 O&M funds were tied to the option 1 period of performance, which occurred from September 30, 2004, through September 29, 2005.

However, NIH used \$307,945.87 in FY 2005 O&M funds from F1AT1X4308G001 to pay for work performed outside the funds’ period of availability. The contractor billed for the \$307,945.87 on portions of invoices 35 and 36. The dates of service for these invoices were from October 1, 2005, through October 28, 2005; and October 29, 2005, through December 2, 2005, respectively. These dates fall outside the funds’ period of availability, which was from September 30, 2004, through September 29, 2005. Therefore, NIH should not have used the \$307,945.87 in FY 2005 O&M funds provided on F1AT1X4308G001 to pay portions of invoices 35 and 36.

From September 2002 through February 2007, Joint Task Force–Global Network Operations provided \$10,564,323.06 in FY 2002 through FY 2007 O&M funds on 14 MIPRs and their amendments. Invoices received through March 28, 2007, totaled \$10,198,390.25. In total, NIH paid \$1,884,739.12 in invoices for work performed outside the funds’ period of availability. This consisted of \$245,247.59 in FY 2004 O&M funds provided on NMIPR049207173; \$307,945.87 in FY 2005 O&M funds provided on F1AT1X4308G001; \$166,828.58 in FY 2005 O&M funds provided on F1AT1X5234G001; \$660,000 in FY 2005 O&M funds provided on F1AT1X5258G001; \$361,717.08 in FY 2006 O&M funds provided on F1AT1X6090G001; and \$143,000 in FY 2006 O&M funds provided on F1AT1X6089G002. The \$1,884,739.12 represents a potential BFNR violation.

In addition, a potential purpose statute violation of \$256,343 occurred when DoD funded a task on the order with O&M funds instead of

RDT&E funds. NIH awarded this order on behalf of Joint Task Force–Global Network Operations on September 30, 2002. Joint Task Force–Global Network Operations used Air Force O&M funds for all task areas associated with the order. Joint Task Force–Global Network Operations modified the statement of work and NIH issued a modification on June 3, 2004. The statement of work added task 9, which was “to define, develop, document, prototype, test, and modify the Universal Computer Crime System.” Based on the description in the statement of work and the explanation for when RDT&E funds should be used, Joint Task Force–Global Network Operations should have used RDT&E funds for task 9 of this requirement. A Joint Task Force–Global Network Operations monthly report record indicates that work for task 9 totaled \$256,343. The \$256,343 represents a potential purpose statute violation because DoD used the wrong appropriation to fund the task order.

Joint Interagency Task Force South. The NIH contracting office awarded an order on behalf of the Joint Interagency Task Force South that potentially violated the BFNR.

43. **Task Order 2232.** A potential BFNR violation occurred when NIH used \$1,294,486.97 of DoD funds to pay for work performed outside the funds’ period of availability. NIH awarded this order on behalf of the Joint Interagency Task Force South on May 1, 2003. The period of performance for this task order was May 1, 2003, through September 30, 2009. The base period was from May 1, 2003, through September 30, 2003, with six 12-month option periods from October 1, 2003, through September 30, 2009.

The Joint Interagency Task Force South funded the order with FY 2003 through FY 2007 Army O&M funds. MIPRs for O&M funds obligated within a period of performance were available to pay for work performed within that base or option period.

For example, NIH accepted MIPR5A69M60008 and its amendments on November 2, 2004; December 21, 2004; and February 25, 2005. MIPR5A69M60008 and its amendments provided FY 2005 O&M funds totaling \$4,160,028.43 for services. Because NIH accepted MIPR5A69M60008 and its amendments during option period 2, these FY 2005 O&M funds were tied to the option 2 period of performance, which occurred from October 1, 2004, through September 30, 2005. Therefore, the \$4,160,028.43 in FY 2005 O&M funds were available to pay for work performed from October 1, 2004, through September 30, 2005.

However, NIH used \$201,693.31 in FY 2005 O&M funds from MIPR5A69M60008 to pay for work performed outside the funds’ period of availability. The contractor billed for the \$201,693.31 on portions of invoices 10-04 and 11-05. The dates of service for these invoices were from August 28, 2003, through October 1, 2004; and October 29, 2005, through November 25, 2005, respectively. These

dates fall outside the funds' period of availability, which was from October 1, 2004, through September 30, 2005. Therefore, NIH should not have used the \$201,693.31 in FY 2005 O&M funds provided on MIPR5A69M60008 to pay for portions of invoices 10-04 and 11-05.

From May 2003 through February 2007, the Joint Interagency Task Force South provided \$18,831,703.92 in FY 2003 through FY 2007 O&M funds on five MIPRs and their amendments. Invoices received as of March 22, 2007, totaled \$13,741,389.08. In total, NIH paid \$1,294,486.97 in invoices for work performed outside the funds' period of availability. This consisted of \$11,111 in FY 2004 O&M funds provided on MIPR4A69M60016; \$201,693.31 in FY 2005 O&M funds provided on MIPR5A69M60008; and \$1,081,682.66 in FY 2006 O&M funds provided on MIPR6A69M60005. The \$1,294,486.97 represents a potential BFNR violation.

DoD Criminal Investigation Task Force. The NIH contracting office awarded an order on behalf of the DoD Criminal Investigation Task Force.

Task Order 2361. * We initially identified task order 2361 as a potential BFNR violation. During the audit process, the audit team informed the DoD Criminal Investigation Task Force of the potential BFNR violation. The DoD Criminal Investigation Task Force corrected the potential violation by requesting that NIH change which MIPR some of the invoices were charged against and deobligating \$971,168.02 in FY 2005 O&M funds provided on MIPR5ALISTS217, and \$964,672.78 in FY 2006 O&M funds provided on MIPR6NIHFEE333. We commend management for resolving the problems we identified.

* Initially we identified 12 assisted acquisitions that had potential ADA violations. However, after management took corrective action on Task Order 2361, there are 11 assisted acquisitions for which management needs to take appropriate corrective action to resolve their potential ADA violations.

Appendix E. Internal Control Issues Identified

Table E-1. Direct Acquisitions

Order Number	Inadequate Justification	No Justification	No Policy Implementation
Fleet and Industrial Supply Center—San Diego, California			
N00244-06-F-0043			
N00244-06-F-0586		•	
N00244-06-F-0847			
Naval Air Systems Command—Patuxent River, Maryland			
N00421-06-F-0025	•		
N00421-06-F-0107	•		
N00421-06-F-0124		•	
N00421-06-F-0178	•		
N00421-06-F-0181		•	
N00421-06-F-0183	•		
N00421-06-F-0220	•		
N00421-06-F-0304	•		
N00421-06-F-0305	•		
N00421-06-F-0306		•	
N00421-06-F-0366		•	
U.S. Naval Research Laboratory—Washington D.C.			
N00173-05-F-0837		•	•
N00173-05-F-0849		•	•
Space and Naval Warfare Systems Center—Charleston, South Carolina			
N62356-06-F-Q324	•		
N62356-06-F-0047	•		
N62356-06-F-0757	•		
N62356-06-F-1812	•		
N62356-06-F-1879	•		
N62356-06-F-1953	•		
N62356-06-F-2094	•		
N62356-06-F-2131	•		
N62356-06-F-2177	•		
N62356-06-F-2179	•		
N62356-06-F-2183	•		
N62356-06-F-2211	•		
N62356-06-F-2389	•		
N62356-06-F-2393	•		
N62356-06-F-2398	•		
N62356-06-F-2608	•		
N62356-06-F-2865	•		
N62356-06-F-2896	•		
N62356-06-F-2897	•		
N62356-06-F-2898	•		
N62356-06-F-3323	•		

Table E-1. Direct Acquisitions (cont'd)

Order Number	Inadequate Justification	No Justification	No Policy Implementation
Space and Naval Warfare Systems Center—Charleston, South Carolina (cont'd)			
N62356-06-F-3691	•		
N62356-06-F-3692	•		
N62356-06-F-3839	•		
N62356-06-F-4314	•		
N62356-06-F-4354	•		
N62356-06-F-5023	•		
N62356-06-F-5024	•		
N62356-06-F-8071	•		
Space and Naval Warfare Systems Center—San Diego, California			
N66001-06-F-Q057	•		
7N07	•		
7N09	•		
7N16	•		
7N17	•		
Marine Corps Regional Contracting Office Southwest—Camp Pendleton, California			
M00681-05-F-1111		•	
M00681-06-F-0034		•	
Marine Corps Systems Command—Quantico, Virginia			
M67854-06-F-4015		•	
M67854-06-F-4081		•	
M67854-06-F-4157		•	
M67854-06-F-4173		•	
M67854-06-F-4282		•	
Headquarters Air Force Materiel Command, Aeronautical Systems Center, Directorate of Operational and Central Support Contracting—Wright-Patterson Air Force Base, Ohio			
FA8604-06-F-7569		•	
FA8604-06-F-7656		•	
Headquarters Air Mobility Command, Installations and Mission Support—Scott Air Force Base, Illinois			
FA4452-06-F-0061	•		
Defense Information Technology Contracting Office National Capital Region—Arlington, Virginia			
HC1047-06-F-4031		•	
HC1047-06-F-4144		•	
Defense Supply Center—Philadelphia, Pennsylvania			
SP0200-06-F-QA24	N/A		
SP0200-06-F-QA25	•		
SP0200-06-F-QA41	•		
SP0200-06-F-QA57	•		
SP0200-06-F-QA83	N/A		
SP0200-06-F-QB45	•		
SP0200-06-F-QB46	•		
SP0200-06-F-QB47	•		

Table E-1. Direct Acquisitions (cont'd)

Order Number	Inadequate Justification	No Justification	No Policy Implementation
Defense Supply Center—Philadelphia, Pennsylvania (cont'd)			
SP0200-06-F-QB48	•		
SP0200-06-F-QB50	•		
SP0200-06-F-QB60	•		
SP0200-06-F-QB61	•		
SP0200-06-F-QB62	•		
SP0200-06-F-QB64	N/A		
SP0200-06-F-QB65	N/A		
SP0200-06-F-QB68	•		
SP0200-06-F-QB79	N/A		
SP0200-06-F-QB91	N/A		
SP0200-06-F-QB92	N/A		
SP0200-06-F-QC06	N/A		
SP0200-06-F-QC07	N/A		
SP0200-06-F-QC08	N/A		
SP0200-06-F-QC09	N/A		
SP0200-06-F-QC10	N/A		
SP0200-06-F-QC15	N/A		
SP0200-06-F-QC16	N/A		
SP0200-06-F-QC17	N/A		
SP0200-06-F-QC33	N/A		
SP0200-06-F-QC62	N/A		
Defense Information Technology Contracting Office Scott—Scott Air Force Base, Illinois			
HC1013-06-F-2113		•	
HC1013-06-F-2402		•	
HC1013-06-F-2413		•	
HC1013-06-F-2415		•	
HC1013-06-F-2752		•	
HC1013-06-F-2757		•	
HC1013-06-F-2780		•	

Table E-2. Assisted Acquisitions

Order Number	Inadequate Justification	No Justification	No Policy Implementation
Pentagon Telecommunications Center—Arlington, Virginia			
2380 ¹		•	
Defense Manpower Data Center—Arlington, Virginia			
2331		•	
2376 ²	•		
Office of the Deputy Chief of Naval Operations for Information, Plans, and Strategy in the Washington Navy Yard—Washington, D.C.			
2213	•		
Headquarters Air Force Office of the Deputy Chief of Staff for Manpower and Personnel, Directorate of Manpower and Organization—Arlington, Virginia			
2480	•		
Office of the Army Chief Information Office/(G-6), Office of Architecture, Operations, Network, and Space; Army Architecture Integration Cell—Arlington, Virginia			
2429		•	•
2517		•	•
DoD Criminal Investigation Task Force—Fort Belvoir, Virginia			
2361 ¹		•	
Headquarters Air Force; Office of the Deputy Chief of Staff for Operations, Plans, and Requirements; Directorate of Executive Support—Arlington, Virginia			
2412 ¹		•	
Headquarters Air Mobility Command, Communications—Scott Air Force Base, Illinois			
2513		•	•
Defense Technology Information Center—Fort Belvoir, Virginia			
2425	•		
2503	•		
Office of the Secretary of the Air Force; Financial Management, Information Systems and Technology Directorate—Wright-Patterson Air Force Base, Ohio			
2377 ¹		•	•
Headquarters Air Force Materiel Command, Communications—Wright-Patterson Air Force Base, Ohio			
2311 ¹		•	•
2315		•	•
Joint Task Force—Global Network Operations—Arlington, Virginia			
2204 ¹		•	
U.S. Army Research Laboratory, Program and Budget Office—Adelphi, Maryland.			
2323		•	•

¹ These task orders had two contract actions for which a justification was needed but none was prepared.

² There were two contract actions for Task Order 2376 that had inadequate justifications.

Table E-2. Assisted Acquisitions (cont'd)

Order Number	Inadequate Justification	No Justification	No Policy Implementation
United States Southern Command—Miami, Florida			
2054		•	
2228 ³		•	
Joint Interagency Task Force South—Key West, Florida			
2232	•		
Defense Information Systems Agency; Manpower, Personnel, and Security Directorate—Arlington, Virginia			
2369 ³		•	
2512	•		

³ These task orders had two contract actions for which a justification was needed but none was prepared.

Appendix F. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition, Technology, and Logistics
 Director, Acquisition Resources and Analysis
 Director, Defense Procurement and Acquisition Policy
Under Secretary of Defense (Comptroller)/Chief Financial Officer
 Deputy Chief Financial Officer
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Director, Program Analysis and Evaluation

Department of the Army

Assistant Secretary of the Army (Financial Management and Comptroller)
Army Inspector General
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Commander, U.S. Southern Command
Commander, U.S. Joint Forces Command
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 Joint Interagency Task Force South

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 Director, Defense Technical Information Center
Director, TriCare Management Activity

Non-Defense Federal Organization

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Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Homeland Security and Governmental Affairs
House Committee on Appropriations
House Subcommittee on Defense, Committee on Appropriations
House Committee on Armed Services
House Committee on Oversight and Government Reform
House Subcommittee on Government Management, Organization, and Procurement,
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Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics Comments



ACQUISITION,
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SEP 27 2007

MEMORANDUM FOR DEPUTY ASSISTANT INSPECTOR GENERAL
ACQUISITION AND CONTRACT MANAGEMENT

THROUGH: DIRECTOR, ACQUISITION RESOURCES AND ANALYSIS 78/10/3/07

SUBJECT: Response to DoDIG Draft Audit Report on "FY 2006 DoD Purchases Made Through the National Institutes of Health," (Project No. D2006-D000CF-0243.000) dated August 27, 2007.

As requested, I am providing the USD (AT&L) response to recommendations A.1.(a-d), A.2, and B.1. of the subject draft report.

Recommendation A.1.(a) The OIG recommended that the Under Secretary of Defense for Acquisition, Technology, and Logistics disseminate a memorandum to all DoD contracting offices to reemphasize that contracting officials are responsible for knowing and adhering to the regulations for different contract types, including single-award contracts, multiple-award contracts, and Federal supply schedules.

Recommendation A.1.(b): The OIG recommended that the Under Secretary of Defense for Acquisition, Technology, and Logistics, disseminate a memorandum to all DoD contracting offices to reemphasize that contracting officers are required to follow Federal Acquisition Regulation 16.505 when placing orders on multiple-award contracts. Contracting officers must provide a fair opportunity to all contractors in a multiple-award contract.

Recommendation A.1.(c): The OIG recommended that the Under Secretary of Defense for Acquisition, Technology, and Logistics disseminate a memorandum to all DoD contracting offices to reemphasize that the Federal Acquisition Regulation 4.8 and 16.505 require the contract award files to contain award selection documents that explain the basis for award.

Recommendation A.1.(d): The OIG recommended that the Under Secretary of Defense for Acquisition, Technology, and Logistics, disseminate a memorandum to all DoD contracting offices to reemphasize that the Federal Acquisition Regulation Subpart 8.4 applies only to the General Services Administration Federal supply schedule and schedules, to which General Services Administration delegated the authority.



Response: **Concur:** The Department will issue a policy memo addressing deficiencies identified in the subject report. We expect to issue the policy memo by November 30, 2007.

Recommendation A.2: The OIG recommended that the Under Secretary of Defense for Acquisition, Technology, and Logistics, direct contracting officers to use the National Institutes of Health Information Technology Acquisition and Assessment Center Website's request for quote tool when using the Electronic Commodities Store III multiple-award contract.

Response: **Concur:** That the Department will coordinate with NIH to post language to the NIH website which will require the contracting officers to use the National Institutes of Health Information Technology Acquisition and assessment center, website's request for quote tool when using the Electronic Commodities Store III Multiple-award contract. We expect this action to be completed by October 31, 2007.

Recommendation B.1.a: The OIG recommended that the Under Secretary of Defense for Acquisition, Technology, and Logistics, direct users of the Chief Information Officer-Solutions and Partners 2 Innovations contracts to create a competitive environment among all applicable contractors by leaving the solicitation response time open for a period of time commensurate with the complexity and value of the requirement.

Response: **Concur:** The Department will coordinate with NIH to post language to the NIH website which direct users of the Chief Information Officer – Solutions and Partners 2 Innovations contract to consider all factors when determining the appropriate solicitation response time. We expect this action to be completed by October 31, 2007.

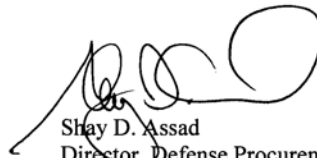
Recommendation B.1.b: The OIG recommended that the Under Secretary of Defense for Acquisition, Technology, and Logistics, disseminate guidance to users of the Chief Information Officer-Solutions and Partners 2 innovations contracts to reemphasize that DoD users are responsible for much of the pre-contract award requirements. Specifically, program officials using the Chief Information Officer-Solutions and Partners 2 Innovations contracts are required to:

- (1) Document and support price analysis determinations.
- (2) Conduct effective price negotiations on sole-source awards.
- (3) Explain resolutions of differences between the Government cost estimates and the contractor's price proposal.
- (4) Support the methodology used to prepare Government cost estimates.

-
- (5) Prepare quality assurance surveillance plans that specify the work that requires surveillance and the type of surveillance to be performed.
 - (6) Prepare acquisition plans when the total procurement cost equals or exceeds the established thresholds for preparing written acquisition plans.
 - (7) Ensure that contractor personnel do not perform inherently governmental functions.

Response: **Concur:** The Department will coordinate with NIH to post language to the NIH website that will provide guidance on proper pre-award roles and responsibilities of DoD program officials when using the Chief Innovations Officers-Solutions and Partners 2 Innovation Contracts. We expect this action to be completed by 31 October, 2007.

My POC is Michael Canales; he can be reached at (703) 695-8571 or via e-mail at michael.canales@osd.mil.



Shay D. Assad
Director, Defense Procurement and
Acquisition Policy

United States Southern Command Comments



REPLY TO
ATTENTION OF

DEPARTMENT OF DEFENSE
UNITED STATES SOUTHERN COMMAND
3511 NW 91ST AVENUE
MIAMI, FL 33172-1217

SCJ8

26 September 2007

MEMORANDUM FOR DEPARTMENT OF DEFENSE, OFFICE OF INSPECTOR GENERAL


SUBJECT: Draft Report of FY 2006 DoD Purchases Made Through the National Institutes of Health (Project No. D2006-D000CF-0243.000)

1. US Southern Command (USSOUTHCOM) appreciates the opportunity to provide comments regarding the subject draft report. USSOUTHCOM has conducted an initial review of the three potential Anti-Deficiency Act (ADA) infractions identified in the report (Task Orders 2054, 2228, and 2232). Our initial review indicates that errors occurred in the billing/invoicing process. To date, USSOUTHCOM has completed all requisite actions to correct the potential ADA infractions. USSOUTHCOM has forwarded copies of the corrected task orders and amended Military Interdepartmental Purchase Requests to the Office of the Deputy Assistant Secretary of the Army, Financial Operations (SAFM-FO). Ms. Elsie Stefanny, the SAFM-FO point of contact (POC), has forwarded copies of the aforementioned documents to your POC, Ms. Jennifer M. Principe.

2. In a memorandum, dated 13 September 2007, SAFM-FO requested that USSOUTHCOM conduct a preliminary investigation to ascertain whether an ADA violation occurred (case number 07-21). The suspense date for the completion of the preliminary investigation is 21 December 2007. USSOUTHCOM will provide additional information/comments at the conclusion of the preliminary investigation. The focus of the preliminary investigation is Task Order 2054 (initially funded in FY2002 with four option years -- period of performance was 1 October 2001 through 30 September 2006). Following USSOUTHCOM's initial review of this task order, USSOUTHCOM subsequently deobligated \$3.5M recovering excess payments made during the period 2002 - 2005; USSOUTHCOM then provided an additional \$2.1M to fund a FY2006 funding shortfall.

3. USSOUTHCOM concurs with the DoD IG recommendation to "request the National Institutes of Health to terminate task order 2232 at the most economical point in time, such as at the end of the current option period of performance." Since the end of the current option period coincides with the end of the fiscal year, USSOUTHCOM and the Joint Interagency Task Force South (JIATF-S) have agreed not to exercise the option for FY08. On 1 Oct 2007, USSOUTHCOM and JIATF-S will no longer have a contractual relationship with the NIH in regard to task order 2232. The previous contract with General Dynamics that was coordinated through National Institutes of Health has been awarded to another contractor for FY08.

4. USSOUTHCOM stands ready to assist the DoD Office of Inspector General in whatever manner possible to allow you to finalize your report. My point of contact for this activity is Mr. Wilbert Haggray. His number is commercial: (305) 437-3343 or DSN 567-3343.


for TODD L. SCHAFER
Senior Executive Service
Director of Programs and Resources

TriCare Management Activity Comments



TRICARE
MANAGEMENT
ACTIVITY

**OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
HEALTH AFFAIRS**

SKYLINE FIVE, SUITE 810, 5111 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041-3206

SEP 28 2007

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL
DEPUTY ASSISTANT INSPECTOR GENERAL,
ACQUISITION AND CONTRACT MANAGEMENT

SUBJECT: Report on Fiscal Year (FY) 2006 Department of Defense (DoD) Purchases
Made Through the National Institutes of Health (Project No. D2006-
D000CF-0243.000)

Thank you for the opportunity to review and provide comments on the Draft Report
"FY 2006 DoD Purchases Made Through the National Institutes of Health" (Project No.
D2006-D000CF-0243.000).

I am responding to the Draft Report on behalf of the TRICARE Management
Activity (TMA) who is a Collateral Action Office (CAO) on the audit. The TMA was
directed in the Draft Report (page iii) to submit comments directly to the DoD Inspector
General (IG).

Overall, I concur with the draft report's findings and conclusions. TMA has
implemented all of the changes and actions directed in the Draft Report. Copies of the
supporting documentation are attached.

My point of contacts are Mr. Walt Ruggles (Functional) at (703) 681-4355 and Mr.
Gunther Zimmerman (Audit Liaison) at (703) 681-4360.

Allen W. Middleton
Acting Chief Financial Officer
TRICARE Management Activity

Attachments:
As stated

cc: OUSD(C)

**DEPARTMENT OF DEFENSE INSPECTOR GENERAL
DRAFT REPORT
D2006-D000CF-0243.000**

**Agency Comments on Draft Report, “FY06 DoD Purchases Made Through National
Institutes of Health”**

DEPARTMENT OF DEFENSE COMMENTS

Recommendation C: We recommend the Director, TRICARE Management Activity, to comply with section 1501, title 31, United States Code and prepare funding documents that contain sufficient details or references to a statement of work specifying TRICARE Management Activity’s purchase requirement.

DoD Response: The TRICARE Management Activity will insure that future funding documents comply with section 1501, title 31, U.S.C. by containing sufficient detail or a reference to a statement of work specifying purchase requirements. Additionally, the three (3) potential Anti-Deficiency Act violations referenced in Appendix D involving orders issued by the Space and Naval Warfare Systems Center, Charleston against the NIH Electronic Commodities Store (ECS) III contracts were reviewed. These same three orders were part of an Under Secretary of Defense (Comptroller) (USD(C)) review / investigation. The outcome of the investigation revealed that a potential bona fide need violation existed and was correctible. The correcting funds have been committed. Standard Form 1081’s were prepared and forwarded to USD(C) and DFAS to move the disbursements made under aforementioned orders to the correct fiscal year.

Team Members

The Department of Defense Office of the Deputy Inspector General for Auditing, Acquisition and Contract Management prepared this report. Personnel of the Department of Defense Office of Inspector General who contributed to the report are listed below.

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Inspector General Department *of* Defense